

EXHIBIT 1

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UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA

League of Latin American Citizens)
- Richmond)
)
Plaintiff,)
)
vs.) No. 1:18-cv-00423
)
Public Interest Legal Foundation)
and J. Christian Adams)
)
Defendant.)
_____)

DEPOSITION OF JUSTIN LEVITT taken at 555 South
Flower Street, Thirty-Third Floor, Los
Angeles, California, at 9:14 a.m., Wednesday,
April 17, 2019, before Theresa JoAnn
Phillips-Blackwell, CSR 12700.

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25

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2	EXHIBITS		2	9:14 a.m.)	
3			09:14:00	3	
4	DEFENSE	PAGE	09:14:08	4	THE VIDEOGRAPHER: Good morning. My name is
5	29 - Redacted Documents and an E-Mail	102	09:14:45	5	Alex Loverde. I am a videographer associated with a
6	Dated July 28, 2017		09:14:47	6	Sound Depo. The date today is April 17, 2019; and the
7	30 - Fed. R. Evid. 1006 Summary of Justin	103	09:14:51	7	time is 9:14 a.m.
8	Levitt's Email Exchanges with		09:14:53	8	This deposition is taking place at Foley &
9	PILF/VVA Reports		09:14:55	9	Lardner in the matter of the League of Latin American
10	31 - Spreadsheet Containing Names and	108	09:14:59	10	Citizens - Richmond versus Public Interest Legal
11	E-Mail Addresses		09:15:01	11	Foundation and J. Christian Adams. Case number is
12	32 - List of Names and Information on	110	09:15:07	12	1:18-cv-00423. And this is the videotaped deposition of
13	Voting History		09:15:11	13	Justin Levitt taken on behalf of the defendant.
14	33 - List of Names and Information on	119	09:15:14	14	Will the counsels for all parties please
15	Voting History		09:15:15	15	identify themselves.
16	34 - Various E-Mails	136	09:15:17	16	MR. LOCKERBY: Plaintiffs first.
17	35 - Article Entitled "Fake 'Voter Fraud'	143	09:15:20	17	MR. LEBOWITZ: Sure. David Lebowitz from Emery
18	Report Debunked by Woman Featured in		09:15:23	18	Celli Brinckerhoff & Abady for the plaintiffs.
19	Front Page Article"		09:15:26	19	MR. GORMAN: Thomas Gorman from Kecker,
20	36 - Article Entitled "Presidential	154	09:15:30	20	Van Nest & Peters on behalf of the Protect Democracy
21	Commission Demands Massive Amounts of		09:15:35	21	Project and the Southern Coalition for Social Justice.
22	State Voter Data"		09:15:36	22	MR. BRIDGES: Harold A. Bridges of Bridges &
23	37 - Article Entitled "Trump's voter fraud	161	09:15:39	23	Bridges for the deponent, Justin Levitt.
24	task force may have broken 2 federal		09:15:42	24	MR. LOCKERBY: And Michael J. Lockerby with
25	laws"		09:15:45	25	Foley & Lardner LLP for the defendants.
	38 - Printouts from Twitter	163			
	39 - Document Entitled "On the Eve of the	181			
	Purges"				
	40 - Article Entitled "Trump's Voter	187			
	Suppression Dream Team/The Voter				
	Purges are Coming"				
	41 - Various E-Mails	191			
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1	I N D E X (Continued)		09:15:47	1	THE VIDEOGRAPHER: Thank you very much.
2	EXHIBITS		09:15:48	2	Will the court reporter please swear in the
3			09:15:50	3	witness.
4	DEFENSE	PAGE	09:15:51	4	DEPOSITION OFFICER: You do solemnly state that
5	42 - Article Entitled "President Trump's	195	09:15:51	5	the evidence you shall give in this matter shall be the
6	Voter Fraud Commission Meets, Smeared		09:15:51	6	truth, the whole truth, and nothing but the truth, so
7	by Deniers"		09:15:51	7	help you God?
8	43 - Various E-Mails	199	09:16:00	8	THE WITNESS: I do.
9			09:16:00	9	
10	INSTRUCTED NOT TO ANSWER		09:16:00	10	EXAMINATION
11	PAGE	LINE	09:16:02	11	
12	36	3	09:16:02	12	BY MR. LOCKERBY:
13	44	22	09:16:02	13	Q. Good morning. As you know, my name is Mike
14	112	10	09:16:04	14	Lockerby. Our law firm, Foley & Lardner LLP, represents
15	112	23	09:16:09	15	the defendants in this case, the Public Interest Legal
16	113	4	09:16:13	16	Foundation, to which I'll refer as PILF, and J.
17	116	14	09:16:17	17	Christian Adams, to whom I'll refer as Mr. Adams.
18	150	13	09:16:19	18	If I ask you any questions that are ambiguous
19			09:16:23	19	or that you don't understand, please ask me rephrase
20			09:16:25	20	them.
21			09:16:26	21	Also, if at any time you'd like to take a break
22			09:16:28	22	for any reason, please speak up; and I'll be happy to
23			09:16:31	23	accommodate you. However, I would ask that you not
24			09:16:34	24	request a break while a question is pending.
25			09:16:37	25	First of all, would you please state your name

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<p>09:16:38 1 for the record.</p> <p>09:16:39 2 A. My name is Justin Michael Levitt.</p> <p>09:16:41 3 Q. And, Mr. Levitt, what is your date and place of</p> <p>09:16:45 4 birth?</p> <p>09:16:45 5 A. March 19th, 1970, in Morristown, New Jersey.</p> <p>09:16:49 6 Q. And what is your current business and residence</p> <p>09:16:52 7 address?</p> <p>09:16:53 8 A. Business address is Loyola Law School at 919</p> <p>09:17:00 9 Albany Street in Los Angeles, California 90015.</p> <p>09:17:03 10 Personal address is 1339 Silver Lake Boulevard in</p> <p>09:17:07 11 Los Angeles, California 90026.</p> <p>09:17:11 12 Q. And you are, of course, a nonparty to this</p> <p>09:17:16 13 litigation.</p> <p>09:17:17 14 Are you represented by counsel today?</p> <p>09:17:19 15 A. I am.</p> <p>09:17:19 16 Q. And who is your counsel?</p> <p>09:17:21 17 A. Drew Bridges, seated to my right.</p> <p>09:17:23 18 Q. Okay. There are two other lawyers in the room</p> <p>09:17:26 19 besides me and Mr. Bridges. Do you claim any kind of</p> <p>09:17:31 20 attorney-client relationship with either of them?</p> <p>09:17:35 21 A. Not with them, no.</p> <p>09:17:37 22 Q. Starting with secondary school, would you</p> <p>09:17:48 23 briefly describe your educational and employment</p> <p>09:17:51 24 background.</p> <p>09:17:54 25 A. I went to Bridgewater High School West as my</p>	<p>09:19:26 1 A. Correct.</p> <p>09:19:26 2 Q. And what did you do after that?</p> <p>09:19:28 3 A. I went to work for a presidential political</p> <p>09:19:32 4 campaign.</p> <p>09:19:36 5 Q. That was in 2003?</p> <p>09:19:38 6 A. Correct.</p> <p>09:19:38 7 Q. Which campaign?</p> <p>09:19:39 8 A. The Wesley Clark for President campaign.</p> <p>09:19:42 9 Q. How long did you work on that campaign?</p> <p>09:19:51 10 A. Until the campaign was over. It was rather</p> <p>09:19:55 11 short.</p> <p>09:19:55 12 Q. We know the outcome.</p> <p>09:19:58 13 A. I believe it was February of 2014 that he and I</p> <p>09:20:02 14 parted ways.</p> <p>09:20:04 15 Q. 2014?</p> <p>09:20:04 16 A. Sorry. 2004. My apologies. 2004.</p> <p>09:20:08 17 Q. And what was your position with the Wesley</p> <p>09:20:11 18 Clark for President campaign?</p> <p>09:20:12 19 A. There were several, which may speak to why it</p> <p>09:20:17 20 was a short campaign. I don't know that I can give them</p> <p>09:20:25 21 to you in order, but at various points I collected</p> <p>09:20:30 22 images of the candidate for use in advertising material.</p> <p>09:20:35 23 I was the political director for various regions of the</p> <p>09:20:38 24 United States. I assisted with responses to surveys and</p> <p>09:20:48 25 the like. I was in charge of data targeting for</p>
Page 10	Page 12
<p>09:17:57 1 high school for four years. I attended Harvard College</p> <p>09:18:02 2 with a bachelor of arts degree. I don't know whether</p> <p>09:18:11 3 this counts as educational background or not. I</p> <p>09:18:14 4 received a Fulbright Fellowship to pursue independent</p> <p>09:18:16 5 research for a year at the University of Cologne in</p> <p>09:18:20 6 Germany. Did not receive a degree there. Then received</p> <p>09:18:27 7 a master's of public administration from what is now the</p> <p>09:18:30 8 Harvard Kennedy School and a JD degree from Harvard Law</p> <p>09:18:35 9 School.</p> <p>09:18:36 10 Q. In what year did you receive your bachelor's</p> <p>09:18:43 11 degree from Harvard?</p> <p>09:18:44 12 A. 1995.</p> <p>09:18:46 13 Q. And in what year did you receive your master's</p> <p>09:18:49 14 from what's now the Kennedy School?</p> <p>09:18:51 15 A. It was a joint degree; so I received the</p> <p>09:18:54 16 master's and JDs at the same time, 2002.</p> <p>09:19:00 17 Q. Following your graduation in 2002, were you</p> <p>09:19:03 18 employed?</p> <p>09:19:04 19 A. I was.</p> <p>09:19:04 20 Q. Where?</p> <p>09:19:05 21 A. I worked for -- I clerked for a federal judge,</p> <p>09:19:08 22 the late Judge Stephen Reinhardt of the Ninth Circuit.</p> <p>09:19:13 23 Q. Where was that?</p> <p>09:19:21 24 A. In Los Angeles.</p> <p>09:19:22 25 Q. So that would have been from 2002 to 2003?</p>	<p>09:20:53 1 communications. I'm sure there were other</p> <p>09:21:00 2 responsibilities. They each came with different titles,</p> <p>09:21:04 3 but they revolved.</p> <p>09:21:09 4 Q. And what did you do after you left Wesley</p> <p>09:21:13 5 Clark's campaign or it left you?</p> <p>09:21:15 6 A. I went to work for a partisan nonprofit called</p> <p>09:21:21 7 America Coming Together.</p> <p>09:21:31 8 Q. Where was that located?</p> <p>09:21:33 9 A. In Washington, D.C. It's where the</p> <p>09:21:41 10 headquarters of the organization was located.</p> <p>09:21:42 11 Q. And you were working in Washington, D.C.?</p> <p>09:21:45 12 A. Correct.</p> <p>09:21:45 13 Q. When you say, "partisan nonprofit," what do you</p> <p>09:21:49 14 mean?</p> <p>09:21:49 15 A. It was a 527 organization, a organization</p> <p>09:21:53 16 organized under Section 527 of the Tax Code supporting a</p> <p>09:21:57 17 political party but not a particular political</p> <p>09:22:00 18 candidate.</p> <p>09:22:01 19 Q. And what was the mission of America Coming</p> <p>09:22:04 20 Together as you understood it at the time?</p> <p>09:22:07 21 A. To help elect democratic candidates up and down</p> <p>09:22:11 22 the ballot. So from president down to significantly</p> <p>09:22:16 23 more down-ballot races.</p> <p>09:22:18 24 Q. And what was your position at America Coming</p> <p>09:22:22 25 Together?</p>

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<p>09:22:22 1 A. I was one of the in-house counsel.</p> <p>09:22:26 2 Q. Was there a particular subject area for which</p> <p>09:22:32 3 you were responsible?</p> <p>09:22:36 4 A. Not especially. From time to time I took on</p> <p>09:22:41 5 different buckets of work, and some of my other counsel</p> <p>09:22:44 6 took on different buckets of work, but not consistently</p> <p>09:22:47 7 throughout the course of.</p> <p>09:22:48 8 Q. Did your duties and responsibilities include</p> <p>09:22:51 9 voter registration or voter eligibility?</p> <p>09:22:56 10 A. Not conducting voter registration, but</p> <p>09:23:01 11 examining the practices of the organization, yes.</p> <p>09:23:10 12 Q. And did your duties and responsibilities</p> <p>09:23:18 13 include ensuring that the organization complied with</p> <p>09:23:22 14 legal requirements for registering voters?</p> <p>09:23:25 15 A. To -- to the best of my power.</p> <p>09:23:27 16 Q. How long did you remain at America Coming</p> <p>09:23:31 17 Together?</p> <p>09:23:31 18 A. I -- spring of 2005. I believe I left in May.</p> <p>09:23:40 19 It's possible I left in March or April.</p> <p>09:23:43 20 Q. And what did you do after that?</p> <p>09:23:45 21 A. I went to work for a nonpartisan nonprofit in</p> <p>09:23:49 22 New York called the Brennan Center for Justice at NYU</p> <p>09:23:54 23 School of Law.</p> <p>09:23:56 24 Q. How long did you remain at the Brennan Center</p> <p>09:24:02 25 for Justice?</p>	<p>09:26:22 1 regulation, to litigate when necessary, to communicate</p> <p>09:26:25 2 about all of those things. On many different parts of</p> <p>09:26:32 3 the Brennan Center's portfolio, depending on the month,</p> <p>09:26:40 4 or months, I worked on different aspects of the Brennan</p> <p>09:26:44 5 Center's work, mostly focusing on eligibility, election</p> <p>09:26:49 6 administration, and redistricting.</p> <p>09:26:55 7 Q. Did you author or publish any papers or reports</p> <p>09:27:00 8 while you were at the Brennan Center?</p> <p>09:27:01 9 A. I did.</p> <p>09:27:02 10 Q. Are there any that you specifically recall?</p> <p>09:27:05 11 A. There is one called "Making the List" on voter</p> <p>09:27:10 12 registration databases. There was one called "The</p> <p>09:27:17 13 Citizen's Guide to Redistricting." There was one called</p> <p>09:27:22 14 "The Truth About Voter Fraud." There were chapters of</p> <p>09:27:34 15 books and other reports that I authored while I was</p> <p>09:27:37 16 there that weren't necessarily published by the Brennan</p> <p>09:27:40 17 Center. And there were many shorter papers that some</p> <p>09:27:48 18 might call reports and some might not.</p> <p>09:27:53 19 Q. When was "The Truth About Voter Fraud"</p> <p>09:27:55 20 published?</p> <p>09:27:56 21 A. I believe that was 2007, but I'm not certain.</p> <p>09:28:04 22 Q. Okay. Do you recall what conclusions you</p> <p>09:28:10 23 expressed in that report?</p> <p>09:28:11 24 A. Again, many. It attempted to document some of</p> <p>09:28:17 25 the ways that fraud occurs. It attempted to document</p>
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<p>09:24:02 1 A. With a leave, I was there until June of 2010.</p> <p>09:24:16 2 And I pause before June because, again, I'm not sure of</p> <p>09:24:20 3 the month. But mid-2010.</p> <p>09:24:22 4 Q. What was the mission of the Brennan Center for</p> <p>09:24:30 5 Justice as you understood it?</p> <p>09:24:31 6 A. Manifold. To produce research, to advocate for</p> <p>09:24:39 7 public policy, to assist with legislation and</p> <p>09:24:48 8 regulation, to communicate about preferred public</p> <p>09:24:53 9 policy, to litigate when necessary in order to ensure</p> <p>09:24:57 10 that the structures of American democracy were more</p> <p>09:25:08 11 vigorous and vibrant.</p> <p>09:25:09 12 There were several projects at the Brennan</p> <p>09:25:12 13 Center. Some of them concerned criminal justice. Some</p> <p>09:25:15 14 of them concerned economic justice. I was working on</p> <p>09:25:20 15 the project concerning voting rights in elections.</p> <p>09:25:32 16 Q. And what was your position, or positions, at</p> <p>09:25:35 17 the Brennan Center?</p> <p>09:25:36 18 A. Counsel. While I was there I also served as,</p> <p>09:25:45 19 for at least one year, an assistant adjunct clinical</p> <p>09:25:52 20 professor of law at NYU School of Law.</p> <p>09:25:58 21 Q. With respect to voting rights and elections,</p> <p>09:26:03 22 what were your duties and responsibilities at the</p> <p>09:26:06 23 Brennan Center?</p> <p>09:26:09 24 A. To do all of the above tasks. So to conduct</p> <p>09:26:17 25 research, to advocate, to -- to support legislation,</p>	<p>09:28:23 1 some of the ways that claims about fraud may be</p> <p>09:28:28 2 misstated or overstated. It attempted to document some</p> <p>09:28:34 3 of the ways in which claims about fraud didn't pan out</p> <p>09:28:38 4 upon further examination.</p> <p>09:28:44 5 To the extent there was an overall conclusion,</p> <p>09:28:48 6 I guess I'd say it is that in the research I conducted,</p> <p>09:28:56 7 fraud occurred. Different types of fraud occurred at</p> <p>09:29:00 8 different rates. But that the magnitude of voter fraud</p> <p>09:29:05 9 was often overstated in both press and popular advocacy.</p> <p>09:29:12 10 Q. And did you reach any conclusions about the</p> <p>09:29:14 11 extent to which noncitizens register and vote in U.S.</p> <p>09:29:19 12 elections?</p> <p>09:29:19 13 A. I'd characterize them as the same. It happens.</p> <p>09:29:24 14 There are claims that noncitizens vote that are often</p> <p>09:29:28 15 inflated or inaccurate. Sometimes in predictable ways.</p> <p>09:29:34 16 And that the overall degree of perception about the</p> <p>09:29:41 17 extent to which noncitizens are voting is likely</p> <p>09:29:45 18 overstated but that it happens.</p> <p>09:29:47 19 Q. That was your conclusion in 2007 or</p> <p>09:29:57 20 thereabouts. Is that still your opinion today?</p> <p>09:29:59 21 A. It is.</p> <p>09:29:59 22 Q. And you haven't seen anything to make you</p> <p>09:30:02 23 change your opinion on that subject?</p> <p>09:30:04 24 A. I have not. I have seen additional instances</p> <p>09:30:09 25 of noncitizens who have either registered or voted</p>

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<p>09:30:14 1 unlawfully, and I've seen additional claims that</p> <p>09:30:18 2 noncitizens have done so. Some of which are accurate.</p> <p>09:30:22 3 Many of which are not.</p> <p>09:30:23 4 Q. And you yourself have never tried to document</p> <p>09:30:25 5 the extent to which noncitizens vote or have voted in</p> <p>09:30:29 6 U.S. elections, have you?</p> <p>09:30:33 7 MR. BRIDGES: Objection. Vague and ambiguous.</p> <p>09:30:34 8 You may answer, if you understand.</p> <p>09:30:38 9 THE WITNESS: I have extended to documents some</p> <p>09:30:42 10 instances in which noncitizens have voted and some</p> <p>09:30:45 11 instances in which noncitizens have been claimed to have</p> <p>09:30:50 12 voted but -- in which the claims were inaccurate. Yeah.</p> <p>09:30:59 13 I don't know if I can -- I don't know if I understand</p> <p>09:31:02 14 the scope of the question beyond that.</p> <p>09:31:03 15 BY MR. LOCKERBY:</p> <p>09:31:03 16 Q. So you've investigated particular instances of</p> <p>09:31:06 17 non -- alleged noncitizen voting and registration but</p> <p>09:31:09 18 have not sought to document the extent to which that</p> <p>09:31:15 19 happens generally. Would that be fair to say?</p> <p>09:31:17 20 A. Correct.</p> <p>09:31:19 21 Q. Thank you.</p> <p>09:31:19 22 When did you take a leave of absence from the</p> <p>09:31:25 23 Brennan Center?</p> <p>09:31:27 24 A. It would have been in the summer -- again, I'm</p> <p>09:31:34 25 not sure of the month -- of 2008.</p>	<p>09:33:26 1 A. Of which?</p> <p>09:33:30 2 Q. Facts and circumstances that would make it more</p> <p>09:33:33 3 difficult for eligible voters to vote.</p> <p>09:33:38 4 A. There were various rules in various states</p> <p>09:33:42 5 requiring various forms of identification. For example,</p> <p>09:33:45 6 attempting to secure identification for the individuals</p> <p>09:33:47 7 who were ineligible. There were various concerns about</p> <p>09:33:53 8 capacity in various jurisdictions, polling sites not</p> <p>09:33:58 9 sufficiently large or not sufficiently well-staffed or</p> <p>09:34:01 10 not sufficiently equipped or not enough polling sites.</p> <p>09:34:06 11 There were concerns about the scope of preparations for</p> <p>09:34:09 12 early voting and whether individuals would have to wait</p> <p>09:34:12 13 on extremely long lines in order to vote when voting</p> <p>09:34:16 14 hours were available. There were concerns about voter</p> <p>09:34:22 15 registration and the improper processing of voter</p> <p>09:34:26 16 registration forms that might affect eligible voters.</p> <p>09:34:35 17 There were concerns about either official or unofficial</p> <p>09:34:39 18 intimidation.</p> <p>09:34:48 19 That's off the top of my head, but there are</p> <p>09:34:50 20 there are many more. I mean, my -- my responsibilities</p> <p>09:34:53 21 included responding -- both attempting proactively to</p> <p>09:34:57 22 respond to likely concerns and responding to events as</p> <p>09:35:06 23 they arose in the real time.</p> <p>09:35:08 24 Q. When you referred to "intimidation," what did</p> <p>09:35:12 25 you mean by "intimidation"?</p>
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<p>09:31:36 1 Q. And what did you do during your leave of</p> <p>09:31:40 2 absence?</p> <p>09:31:40 3 A. I served as the national voter protection</p> <p>09:31:43 4 counsel for the Obama campaign located at the Democratic</p> <p>09:31:52 5 National Committee.</p> <p>09:31:52 6 Q. And as the national voter protection counsel,</p> <p>09:32:03 7 to whom did you report?</p> <p>09:32:04 8 A. I reported to several individuals. Kendall</p> <p>09:32:09 9 Burman was the in-house counsel. Bob Bauer was the</p> <p>09:32:16 10 general counsel. Those were probably my direct</p> <p>09:32:24 11 reporting relationships.</p> <p>09:32:28 12 Q. And what were your duties and responsibilities</p> <p>09:32:31 13 as national voter protection counsel?</p> <p>09:32:34 14 A. To ensure as best I could that if individuals</p> <p>09:32:37 15 were eligible to vote and wanted to vote, that they</p> <p>09:32:42 16 could and that it would stick in the jurisdictions that</p> <p>09:32:46 17 we were targeting.</p> <p>09:32:47 18 Q. So what was it you were seeking to protect</p> <p>09:32:50 19 voters from?</p> <p>09:32:51 20 A. Either malfeasance or mistake or both. Either</p> <p>09:33:02 21 intentional efforts to keep eligible individuals from</p> <p>09:33:05 22 voting or facts and circumstances that ended up making</p> <p>09:33:15 23 it more difficult for eligible individuals to vote,</p> <p>09:33:20 24 whether intended or not.</p> <p>09:33:21 25 Q. What would some examples of those be?</p>	<p>09:35:13 1 A. There were reports in the past of efforts,</p> <p>09:35:17 2 sometimes by known actors and sometimes by unknown</p> <p>09:35:21 3 actors, to mislead voters in a way that would have been</p> <p>09:35:29 4 frightening or intimidating to many.</p> <p>09:35:33 5 A notorious example from 2004 involved a flyer</p> <p>09:35:43 6 distributed in black neighborhoods in Milwaukee</p> <p>09:35:46 7 purporting to be from the Milwaukee Black Voters League,</p> <p>09:35:49 8 which I do not believe exists or at least which there is</p> <p>09:35:52 9 no independent source, actively misstating the rules for</p> <p>09:35:58 10 voting and threatening individuals with both jail time</p> <p>09:36:03 11 and having their kids taken away from them if they</p> <p>09:36:07 12 violated these purported rules, which did not exist. It</p> <p>09:36:11 13 seemed to me designed to scare people away from coming</p> <p>09:36:17 14 to the polls.</p> <p>09:36:19 15 Q. That is not something that happened while you</p> <p>09:36:22 16 were working on the Obama campaign, though?</p> <p>09:36:25 17 A. That flyer wasn't dropped in 2004. There were</p> <p>09:36:29 18 various reports of, as I remember, similar either</p> <p>09:36:39 19 misstatements of the law or threatening presences at</p> <p>09:36:42 20 various polling places. And leading up to election day</p> <p>09:36:47 21 there was certainly concern that similar things might</p> <p>09:36:52 22 happen in 2008.</p> <p>09:36:53 23 Q. When you say a "threatening presence at a</p> <p>09:36:55 24 polling place," what do you consider to be a threatening</p> <p>09:36:59 25 presence?</p>

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<p>09:36:59 1 A. There was, as I recall -- and I believe this</p> <p>09:37:05 2 was 2008, but I honestly can't be sure -- a call to</p> <p>09:37:14 3 essentially seek -- and I cannot recall exactly how this</p> <p>09:37:19 4 was framed, but in my memory it is beefy tough guys to</p> <p>09:37:25 5 stand at inner city precincts in order to make sure that</p> <p>09:37:31 6 nothing untoward happened. There are many minority</p> <p>09:37:37 7 communities in which the presence of beefy tough guys</p> <p>09:37:41 8 standing and watching the election process can be</p> <p>09:37:45 9 intimidating. That doesn't necessarily mean that that</p> <p>09:37:49 10 activity can or should be stopped, but that can be</p> <p>09:37:52 11 disheartening to many individuals.</p> <p>09:37:56 12 There have been reports in the past of</p> <p>09:38:00 13 individuals standing with weapons outside of polling</p> <p>09:38:03 14 places even where there is a right to lawfully carry</p> <p>09:38:09 15 those weapons. And so where that may not be strictly</p> <p>09:38:13 16 unlawful, that can be intimidating in many</p> <p>09:38:16 17 circumstances.</p> <p>09:38:20 18 And I'm sure that doesn't exhaust the -- the</p> <p>09:38:23 19 range. There are reports of people taking pictures of</p> <p>09:38:26 20 license plates in parking lots. Even though that</p> <p>09:38:30 21 activity may be completely lawful, it can be</p> <p>09:38:34 22 intimidating in some communities for individuals to be</p> <p>09:38:39 23 roaming parking lots on Election Day taking pictures of</p> <p>09:38:42 24 license plates.</p> <p>09:38:47 25 Q. As national voter protection counsel, did you</p>	<p>09:40:37 1 the Civil Rights Division of the Department of Justice.</p> <p>09:40:44 2 Q. So during the time that you were seconded to</p> <p>09:41:02 3 the federal government, who was paying your salary?</p> <p>09:41:05 4 Loyola or the federal government?</p> <p>09:41:07 5 A. Loyola was paying my salary and being</p> <p>09:41:10 6 reimbursed by the Department of Justice.</p> <p>09:41:12 7 Q. And your secondment started in 2015?</p> <p>09:41:16 8 A. Correct.</p> <p>09:41:17 9 Q. Did you have a title at the Civil Rights</p> <p>09:41:21 10 Division of the Department of Justice?</p> <p>09:41:22 11 A. I was one of the deputy assistant attorneys</p> <p>09:41:26 12 general in the division.</p> <p>09:41:31 13 Q. And to whom did you report?</p> <p>09:41:33 14 A. To Vanita Gupta, who was first the acting</p> <p>09:41:39 15 assistant attorney general for civil rights and then the</p> <p>09:41:45 16 principal deputy assistant attorney general for civil</p> <p>09:41:48 17 rights. And ultimately, to the attorney general.</p> <p>09:41:55 18 Q. Was that Loretta Lynch at the time?</p> <p>09:42:01 19 A. It was.</p> <p>09:42:05 20 Q. When did your secondment end?</p> <p>09:42:09 21 A. Inauguration Day. Rather, the day before</p> <p>09:42:13 22 Inauguration Day.</p> <p>09:42:14 23 Q. The day before Inauguration Day?</p> <p>09:42:18 24 A. 2017.</p> <p>09:42:19 25 Q. 2017?</p>
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<p>09:38:51 1 seek to keep beefy tough guys a certain distance away</p> <p>09:38:55 2 from polling places?</p> <p>09:38:56 3 A. No. At least not where they were otherwise</p> <p>09:38:59 4 authorized to be. But it was part of my job to prepare</p> <p>09:39:08 5 as best we could within the law in the event that</p> <p>09:39:12 6 disturbances or other instances of intimidation should</p> <p>09:39:17 7 happen.</p> <p>09:39:19 8 Q. When did you return to the Brennan Center from</p> <p>09:39:28 9 the Obama campaign?</p> <p>09:39:33 10 A. It would have been the spring of 2009. I don't</p> <p>09:39:37 11 recall exactly the month.</p> <p>09:39:43 12 Q. And then after you left the Brennan Center in</p> <p>09:39:46 13 June of 2010, what did you do after that?</p> <p>09:39:51 14 A. I became a professor, a faculty member, at</p> <p>09:39:55 15 Loyola Law School in Los Angeles.</p> <p>09:40:01 16 Q. How long did you remain in that role?</p> <p>09:40:06 17 A. I am still in that role.</p> <p>09:40:08 18 Q. You've done some other things in between?</p> <p>09:40:10 19 A. I have.</p> <p>09:40:10 20 Q. What have you done in between?</p> <p>09:40:13 21 A. And I should clarify. It wasn't -- it wasn't</p> <p>09:40:17 22 in between. I was on loan from Loyola; so I was still a</p> <p>09:40:21 23 faculty member at Loyola while I was seconded,</p> <p>09:40:28 24 essentially, to the federal government. In 2015,</p> <p>09:40:33 25 pursuant to an intergovernmental agreement, I went to</p>	<p>09:42:20 1 A. Correct.</p> <p>09:42:20 2 Q. What were your duties and responsibilities</p> <p>09:42:23 3 while you were seconded to the Department of Justice?</p> <p>09:42:27 4 A. I was responsible for supporting and</p> <p>09:42:33 5 supervising some of the work of the Civil Rights</p> <p>09:42:41 6 Division, focusing primarily on voting rights and on</p> <p>09:42:45 7 employment discrimination. That also necessarily meant</p> <p>09:42:50 8 management of staff and budgetary concerns and other</p> <p>09:42:55 9 support work, in addition to the substance.</p> <p>09:43:03 10 Q. And with respect to voting rights, in</p> <p>09:43:08 11 particular, what initiative, or initiatives, did you</p> <p>09:43:11 12 undertake while you were a justice?</p> <p>09:43:15 13 A. I think that the only thing that I'm able to</p> <p>09:43:19 14 say without waiving a privilege that is due to the</p> <p>09:43:23 15 department is that -- is the public activity of the</p> <p>09:43:28 16 Civil Rights Division at the time. And there were a</p> <p>09:43:31 17 number of cases, a number of filings, a number of policy</p> <p>09:43:36 18 documents that came out of the Department of Justice. I</p> <p>09:43:40 19 can't talk about initiatives we pursued that did not</p> <p>09:43:42 20 become public, and I don't know that I could list you</p> <p>09:43:48 21 all of the initiatives we pursued that did become</p> <p>09:43:51 22 public.</p> <p>09:44:01 23 Q. During your tenure at Loyola, what subject or</p> <p>09:44:05 24 subject matters have you taught?</p> <p>09:44:08 25 A. I have taught a class on constitutional law --</p>

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<p>09:44:13 1 several classes on constitutional law. I have taught</p> <p>09:44:21 2 classes on criminal procedure. I have taught classes on</p> <p>09:44:26 3 election law and voting rights. While visiting as a</p> <p>09:44:36 4 faculty member at other law schools still employed by</p> <p>09:44:41 5 Loyola Law School, I've taught classes on the motives of</p> <p>09:44:44 6 public actors and an undergraduate class on essentially</p> <p>09:45:03 7 introduction to law and law and economics.</p> <p>09:45:16 8 (Telephonic interruption.)</p> <p>09:45:17 9 THE WITNESS: I don't think it's for me.</p> <p>09:45:19 10 MR. LOCKERBY: Why don't we go off the record</p> <p>09:45:20 11 for a minute.</p> <p>09:45:22 12 THE VIDEOGRAPHER: We're off the record at</p> <p>09:45:25 13 9:45 a.m.</p> <p>09:45:26 14 (A recess is taken.)</p> <p>10:10:10 15 THE VIDEOGRAPHER: We are back on the record at</p> <p>10:10:13 16 10:10 a.m.</p> <p>10:10:15 17 BY MR. LOCKERBY:</p> <p>10:10:17 18 Q. Sorry for the interruption.</p> <p>10:10:19 19 During your career, when did you first become</p> <p>10:10:23 20 familiar with the individual defendant in this case,</p> <p>10:10:27 21 J. Christian Adams?</p> <p>10:10:30 22 A. I don't know that I know. I don't recall a</p> <p>10:10:39 23 moment.</p> <p>10:10:42 24 Q. Do you recall how you became familiar with him?</p> <p>10:10:45 25 A. No. I mean, it -- this is -- it's a relatively</p>	<p>10:12:08 1 A. Correct.</p> <p>10:12:08 2 Q. And you also have a videotape of a discussion</p> <p>10:12:15 3 of voting law on television involving Mr. Adams; is that</p> <p>10:12:21 4 right?</p> <p>10:12:25 5 A. I honestly don't know if Mr. Adams was part of</p> <p>10:12:29 6 that discussion. The -- I can't recall whether he was</p> <p>10:12:32 7 on the panel or not. He may well have been. I don't</p> <p>10:12:35 8 remember.</p> <p>10:12:35 9 Q. Do you remember any of the panelists who were?</p> <p>10:12:39 10 A. I remember that Tom Fitton was leading the</p> <p>10:12:43 11 discussion. I remember an individual from Old Dominion</p> <p>10:12:48 12 University who had conducted a study was on the panel.</p> <p>10:12:56 13 I'd be guessing at the other members of the panel.</p> <p>10:13:00 14 Q. Fair enough.</p> <p>10:13:01 15 MR. BRIDGES: Do not guess.</p> <p>10:13:02 16 BY MR. LOCKERBY:</p> <p>10:13:02 17 Q. And the documents you produced also included</p> <p>10:13:05 18 copies of various reports produced by PILF, in addition</p> <p>10:13:12 19 to the ones at issue in this case, the Garden State</p> <p>10:13:16 20 Gotcha report involving New Jersey and Safe Spaces</p> <p>10:13:19 21 involving sanctuary cities; correct?</p> <p>10:13:21 22 A. Correct.</p> <p>10:13:22 23 Q. How long have you been following the work of</p> <p>10:13:27 24 PILF?</p> <p>10:13:27 25 A. I don't know that I'd say that I've been</p>
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<p>10:10:56 1 small sphere and relatively small world, and people</p> <p>10:11:01 2 become acquainted with other people in it. But I don't</p> <p>10:11:03 3 recall.</p> <p>10:11:03 4 Q. What sphere is that?</p> <p>10:11:05 5 A. The sphere of people that work on election law</p> <p>10:11:08 6 and voting rights.</p> <p>10:11:10 7 Q. But you did not overlap with Mr. Adams when he</p> <p>10:11:13 8 was at the Civil Rights Division of DOJ?</p> <p>10:11:16 9 A. I did not.</p> <p>10:11:17 10 Q. And you have seen various publications in which</p> <p>10:11:24 11 he was critical of things that the Department of Justice</p> <p>10:11:29 12 did during your tenure?</p> <p>10:11:31 13 A. Yes.</p> <p>10:11:31 14 Q. The two of you don't see eye to eye on some</p> <p>10:11:36 15 issues. That would be fair to say; correct?</p> <p>10:11:38 16 A. On some issues, that's correct.</p> <p>10:11:41 17 Q. Now, the documents that you produced in</p> <p>10:11:44 18 response to the subpoenas -- we'll look at those in a</p> <p>10:11:48 19 minute -- include a number of publications of PILF that</p> <p>10:11:54 20 you've had your deposition; correct?</p> <p>10:11:56 21 A. Correct.</p> <p>10:11:56 22 Q. And you also had in your possession copies of</p> <p>10:11:58 23 various pleadings that PILF had filed, not just in the</p> <p>10:12:04 24 case in which you're testifying, but in other</p> <p>10:12:06 25 litigation; isn't that right?</p>	<p>10:13:32 1 following the work of PILF. I have followed some things</p> <p>10:13:37 2 that PILF has done. I couldn't tell you how -- I</p> <p>10:13:48 3 couldn't tell the first thing that I read or downloaded</p> <p>10:13:50 4 that PILF had done.</p> <p>10:13:51 5 Q. And for what purpose have you been following</p> <p>10:13:55 6 PILF's work?</p> <p>10:13:57 7 MR. BRIDGES: Objection. Misstates testimony.</p> <p>10:13:58 8 You may answer.</p> <p>10:13:59 9 THE WITNESS: Yeah. Again, I wouldn't say that</p> <p>10:14:01 10 I have been following PILF's work. I am interested in</p> <p>10:14:05 11 election law developments both of law and policy; and so</p> <p>10:14:10 12 I follow some cases and reports concerning election law,</p> <p>10:14:17 13 some of PILF's work included.</p> <p>10:14:19 14 BY MR. LOCKERBY:</p> <p>10:14:19 15 Q. How long have you been collecting work that</p> <p>10:14:23 16 PILF has done either in court or by way of published</p> <p>10:14:27 17 reports?</p> <p>10:14:28 18 A. I couldn't say. I don't remember -- again,</p> <p>10:14:32 19 because I'm not following PILF, I don't remember the</p> <p>10:14:34 20 first thing of theirs that I happened to have saved. I</p> <p>10:14:41 21 don't -- I don't consider what I do to be collecting</p> <p>10:14:43 22 their work. There are occasional reports or cases or</p> <p>10:14:50 23 briefs that are of interest that I save, sometimes to</p> <p>10:14:54 24 read then, sometimes to read later.</p> <p>10:15:00 25 Q. In addition to your teaching responsibilities</p>

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<p>10:15:04 1 at Loyola, do you do any consulting work?</p> <p>10:15:07 2 A. I do.</p> <p>10:15:08 3 Q. And do you sometimes represent clients?</p> <p>10:15:14 4 A. I do.</p> <p>10:15:15 5 Q. When you represent a client is there any kind</p> <p>10:15:17 6 of procedure that you go through to represent a client?</p> <p>10:15:21 7 A. It depends on the client. It depends on the</p> <p>10:15:26 8 nature of the representation.</p> <p>10:15:35 9 Q. When you represent a client do you have an</p> <p>10:15:39 10 engagement letter?</p> <p>10:15:48 11 A. I -- I don't believe that I have had an</p> <p>10:15:53 12 engagement letter in representing a client since I've</p> <p>10:15:57 13 been at Loyola. I have had engagement letters in the</p> <p>10:16:03 14 past.</p> <p>10:16:03 15 Q. Have you represented a client since --</p> <p>10:16:06 16 A. I should --</p> <p>10:16:06 17 Q. I'm sorry. I didn't mean to cut you off.</p> <p>10:16:08 18 A. No. And I'm sorry to interrupt.</p> <p>10:16:11 19 I should amend that. I haven't had what I</p> <p>10:16:14 20 would characterize as a formal engagement letter. I</p> <p>10:16:17 21 have exchanged e-mails with clients designating the</p> <p>10:16:21 22 scope of the engagement, which might well be construed</p> <p>10:16:25 23 to be an engagement letter in some circumstances.</p> <p>10:16:28 24 Q. When you represent a client as an attorney, do</p> <p>10:16:32 25 you at least have some exchange of e-mails setting forth</p>	<p>10:18:36 1 clients or not.</p> <p>10:18:39 2 Q. But except for the circumstances you've</p> <p>10:18:42 3 identified, you would have something in writing, with</p> <p>10:18:46 4 writing including e-mail, setting forth the scope of the</p> <p>10:18:51 5 engagement with respect to any clients for which you</p> <p>10:18:54 6 perform legal services; correct?</p> <p>10:18:59 7 A. I can't think of another example right now</p> <p>10:19:02 8 where I have not. It's possible.</p> <p>10:19:07 9 Q. Are you admitted to practice in California?</p> <p>10:19:09 10 A. I am.</p> <p>10:19:10 11 Q. How long have you been admitted to practice in</p> <p>10:19:13 12 California?</p> <p>10:19:13 13 A. 2003. I don't know the month.</p> <p>10:19:16 14 Q. Are you admitted to practice in any other</p> <p>10:19:18 15 states?</p> <p>10:19:19 16 A. Yes.</p> <p>10:19:19 17 Q. Where?</p> <p>10:19:20 18 A. I'm admitted in New York, in New Jersey. I'm</p> <p>10:19:26 19 currently an inactive member of the bar in Washington,</p> <p>10:19:33 20 D.C. And I've been admitted to practice before certain</p> <p>10:19:36 21 individual tribunals.</p> <p>10:19:38 22 Q. That would be on a pro hac vice basis?</p> <p>10:19:41 23 A. Occasionally pro hac. Sometimes I'm a member</p> <p>10:19:45 24 of the bar of that court.</p> <p>10:19:48 25 Q. But you're not admitted to the Virginia State</p>
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<p>10:16:37 1 the scope of the engagement?</p> <p>10:16:39 2 A. Sometimes. Often.</p> <p>10:16:41 3 Q. Well, would there be any circumstances under</p> <p>10:16:44 4 which you would not have something setting forth the</p> <p>10:16:47 5 scope of the engagement?</p> <p>10:16:49 6 A. Yes.</p> <p>10:16:50 7 Q. What circumstances would those be?</p> <p>10:16:53 8 A. I have represented some clients on amicus</p> <p>10:17:06 9 briefs; and although I know I have had e-mail exchanges</p> <p>10:17:13 10 with some of the lead amici, I consider myself to</p> <p>10:17:16 11 represent all of the amici; and I don't believe I have</p> <p>10:17:19 12 had specific one-on-one e-mail conversations with all of</p> <p>10:17:22 13 the clients represented in all of those amicus briefs.</p> <p>10:17:26 14 Q. Except for amicus briefs, have you had some</p> <p>10:17:29 15 exchange of e-mail or other communications with all of</p> <p>10:17:32 16 the other clients for which you've provided legal</p> <p>10:17:36 17 services setting forth the scope of the engagement?</p> <p>10:17:40 18 A. I don't know. And the reason I don't know is</p> <p>10:18:03 19 that some of -- some of the relationships I've had where</p> <p>10:18:08 20 I have offered legal services have not been</p> <p>10:18:14 21 representations in court. They have been providing, for</p> <p>10:18:19 22 example, legislative or administrative feedback. And I</p> <p>10:18:27 23 honestly don't know whether I had an e-mail exchange</p> <p>10:18:30 24 describing the scope of the feedback that I offer. And</p> <p>10:18:34 25 I don't know whether you would call those individuals</p>	<p>10:19:52 1 Bar, are you?</p> <p>10:19:53 2 A. No, I am not.</p> <p>10:19:53 3 Q. And you haven't practiced law in Virginia, have</p> <p>10:19:57 4 you?</p> <p>10:19:57 5 A. I have not.</p> <p>10:20:03 6 MR. LOCKERBY: I would like to have marked as</p> <p>10:20:06 7 exhibits the first three subpoenas. This one will be</p> <p>10:20:12 8 Exhibit 1.</p> <p>10:20:26 9 Would you two mind sharing?</p> <p>10:20:36 10 And let's go ahead, while we're at it, have</p> <p>10:20:38 11 this one marked as Exhibit 2, please.</p> <p>10:20:57 12 And finally, I'd like to have this marked as</p> <p>10:21:00 13 Exhibit 3, please.</p> <p>10:21:00 14 (Whereupon the documents referred to are marked</p> <p>10:21:00 15 by the reporter as Defense Exhibits 1, 2, and 3 for</p> <p>10:21:00 16 identification.)</p> <p>10:21:00 17 BY MR. LOCKERBY:</p> <p>10:21:18 18 Q. Okay. You've been handed what have been marked</p> <p>10:21:21 19 as Exhibits 1, 2, and 3. 1 is a document subpoena. And</p> <p>10:21:41 20 this is directed to you individually. Exhibit 2 is</p> <p>10:21:46 21 another document subpoena directed to Loyola Law School.</p> <p>10:21:51 22 And then Exhibit 3 is a deposition subpoena.</p> <p>10:21:54 23 You were served with all three of these;</p> <p>10:21:56 24 correct?</p> <p>10:21:56 25 A. I was served with two of these.</p>

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<p>10:22:01 1 Q. With -- so there was one with which you were</p> <p>10:22:05 2 not served; is that right?</p> <p>10:22:06 3 A. Correct.</p> <p>10:22:06 4 Q. Which one is that?</p> <p>10:22:07 5 A. The subpoena to Loyola Law School.</p> <p>10:22:10 6 Q. That was actually served on the law school</p> <p>10:22:12 7 itself or...</p> <p>10:22:13 8 A. That's my understanding.</p> <p>10:22:15 9 Q. But in any event, it wasn't served on you?</p> <p>10:22:18 10 A. Correct.</p> <p>10:22:19 11 Q. And in response to all three subpoenas, you're</p> <p>10:22:23 12 being represented by counsel for Loyola; is that right?</p> <p>10:22:28 13 A. In response to the subpoenas with which I was</p> <p>10:22:31 14 served, I am being represented by counsel for Loyola.</p> <p>10:22:34 15 Q. And with respect to the document subpoena to</p> <p>10:22:38 16 Loyola, Loyola's counsel is representing Loyola?</p> <p>10:22:40 17 MR. BRIDGES: That is correct.</p> <p>10:22:40 18 MR. LOCKERBY: Okay.</p> <p>10:22:42 19 I'd like to have this marked as Exhibit 4,</p> <p>10:22:45 20 please.</p> <p>10:22:45 21 (Whereupon the document referred to is marked</p> <p>10:22:45 22 by the reporter as Defense Exhibit 4 for</p> <p>10:22:45 23 identification.)</p> <p>10:22:45 24 BY MR. LOCKERBY:</p> <p>10:23:06 25 Q. You've been handed what's been marked as</p>	<p>10:25:03 1 BY MR. LOCKERBY:</p> <p>10:25:03 2 Q. You've been handed what's been marked as</p> <p>10:25:07 3 Exhibit 5, and it says it's a privilege log prepared by</p> <p>10:25:13 4 counsel for the Protect Democracy Project and the</p> <p>10:25:18 5 Southern Center for Social Justice Re -- I think that</p> <p>10:25:23 6 should say Coalition for Social Justice -- Re</p> <p>10:25:27 7 Third-Party Subpoenas Issued to Professor Justin Levitt</p> <p>10:25:30 8 and Loyola Law School.</p> <p>10:25:33 9 Did you see this before it was served on</p> <p>10:25:36 10 defendant's counsel?</p> <p>10:25:41 11 A. I'm not sure when it was served. I have seen</p> <p>10:25:44 12 this log.</p> <p>10:26:00 13 Q. And we'll be going through some of the</p> <p>10:26:02 14 individual entries in this log as we get to them and --</p> <p>10:26:09 15 in the chronology. But do you have any kind of written</p> <p>10:26:16 16 agreement with either the Protect Democracy Project or</p> <p>10:26:23 17 the Southern Coalition for Social Justice regarding</p> <p>10:26:26 18 representation in this case?</p> <p>10:26:38 19 A. I don't know the extent to which e-mails</p> <p>10:26:42 20 exchanged would manifest a written agreement of that</p> <p>10:26:46 21 kind, so I don't know if I can answer that question.</p> <p>10:26:51 22 Q. So in answer to that question, either you or</p> <p>10:26:55 23 counsel or some neutral third party would have to look</p> <p>10:26:58 24 at the e-mails to see whether they manifest any written</p> <p>10:27:01 25 agreement; is that right?</p>
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<p>10:23:09 1 Exhibit 4, which is dated March 29, 2019, setting forth</p> <p>10:23:18 2 objections by both Loyola Law School and you to the</p> <p>10:23:26 3 document subpoenas; and there is a reference in the</p> <p>10:23:34 4 objection -- several references to the attorney-client</p> <p>10:23:38 5 privilege and attorney work product.</p> <p>10:23:42 6 Are there documents subpoenaed that you contend</p> <p>10:23:50 7 invade an attorney-client privilege that you are</p> <p>10:23:55 8 entitled or obligated to assert?</p> <p>10:23:57 9 MR. BRIDGES: Yes.</p> <p>10:23:57 10 As his counsel, I'll respond to that because we</p> <p>10:24:01 11 interposed the objections.</p> <p>10:24:02 12 Yes.</p> <p>10:24:03 13 MR. LOCKERBY: Okay.</p> <p>10:24:05 14 BY MR. LOCKERBY:</p> <p>10:24:05 15 Q. And similarly, are there work product</p> <p>10:24:09 16 objections that you believe that you can claim</p> <p>10:24:17 17 individually or need to claim on behalf of somebody</p> <p>10:24:20 18 else?</p> <p>10:24:20 19 MR. BRIDGES: Yes. Need to claim on behalf of</p> <p>10:24:22 20 somebody else.</p> <p>10:24:42 21 MR. LOCKERBY: I'd like to have this marked as</p> <p>10:24:44 22 Exhibit 5, please.</p> <p>10:24:44 23 (Whereupon the document referred to is marked</p> <p>10:24:44 24 by the reporter as Defense Exhibit 5 for</p> <p>10:25:03 25 identification.)</p>	<p>10:27:04 1 A. I would have to look at the writings to see</p> <p>10:27:07 2 whether an -- an agreement were written there, yes.</p> <p>10:27:09 3 Q. Do you know anything about the nature of the</p> <p>10:27:22 4 attorney work product claim that is being made by two of</p> <p>10:27:27 5 the law firms representing plaintiffs in this case, the</p> <p>10:27:34 6 Protect Democracy Project and the Southern Coalition for</p> <p>10:27:37 7 Social Justice?</p> <p>10:27:37 8 MR. BRIDGES: I'm going to object that it's</p> <p>10:27:38 9 vague and ambiguous. And also, invades the attorney</p> <p>10:27:43 10 work product objection that is interposed because I</p> <p>10:27:47 11 think discussing the scope of that project for someone</p> <p>10:27:52 12 who is retained as a nonexpert witness or consultant</p> <p>10:27:57 13 would also invade that protection.</p> <p>10:28:01 14 MR. LOCKERBY: So is that an instruction not to</p> <p>10:28:03 15 answer, then?</p> <p>10:28:04 16 MR. BRIDGES: It is.</p> <p>10:28:04 17 BY MR. LOCKERBY:</p> <p>10:28:05 18 Q. Okay. So were you retained as a consultant by</p> <p>10:28:14 19 these two law firms?</p> <p>10:28:26 20 A. Yes.</p> <p>10:28:28 21 Q. When did that happen?</p> <p>10:28:30 22 A. I don't recall the date.</p> <p>10:28:39 23 Q. So it could have been before or after June 27,</p> <p>10:28:46 24 2017, the first date that appears on the privilege log</p> <p>10:28:48 25 that's been marked as Exhibit 5?</p>

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<p>10:28:50 1 A. Correct.</p> <p>10:28:53 2 Q. And you don't know whether that retention is</p> <p>10:28:56 3 reflected in writing anywhere?</p> <p>10:28:58 4 A. I do not.</p> <p>10:29:00 5 Q. And who approached whom about the retention?</p> <p>10:29:04 6 Did you approach these two law firms, or did they</p> <p>10:29:08 7 approach you?</p> <p>10:29:10 8 A. We were in conversation, and so I don't know</p> <p>10:29:17 9 that I can say who approached whom.</p> <p>10:29:21 10 Q. In fact -- let me strike that.</p> <p>10:29:28 11 As of the time that you were first in</p> <p>10:29:33 12 conversation, as you put it, was the anticipation that</p> <p>10:29:40 13 there would be litigation filed against the defendants</p> <p>10:29:42 14 in this case?</p> <p>10:29:47 15 A. I think the anticipation was that there might</p> <p>10:29:50 16 be, yes.</p> <p>10:29:51 17 Q. And, in fact, that's something that, according</p> <p>10:29:54 18 to documents you produced in this litigation, you were</p> <p>10:29:58 19 trying to convince the Protect Democracy Project and the</p> <p>10:30:03 20 Southern Coalition for Social Justice to do; isn't that</p> <p>10:30:07 21 right?</p> <p>10:30:07 22 A. I don't know that I would agree with that</p> <p>10:30:10 23 characterization, no.</p> <p>10:30:11 24 Q. Would you agree with that characterization if</p> <p>10:30:14 25 you saw that in something that you wrote?</p>	<p>10:32:36 1 of entries beginning with March 17, 2019; and all of</p> <p>10:32:45 2 those communications were with the Bridges law firm in</p> <p>10:32:52 3 connection with the subpoena; is that right?</p> <p>10:32:53 4 A. Correct.</p> <p>10:32:56 5 And I realize now that I should amend a</p> <p>10:32:59 6 previous answer. I have seen this privilege log.</p> <p>10:33:03 7 MR. BRIDGES: Referring to Exhibit 6.</p> <p>10:33:04 8 THE WITNESS: Sorry. Pardon me. Referring to</p> <p>10:33:06 9 Exhibit 6. I don't know whether I have previously seen</p> <p>10:33:09 10 Exhibit 5.</p> <p>10:33:17 11 MR. LOCKERBY: And if you turn -- since this</p> <p>10:33:19 12 isn't numbered, it's easier just to count from the back,</p> <p>10:33:23 13 the fourth page from the end.</p> <p>10:33:27 14 MR. BRIDGES: Of Exhibit 6?</p> <p>10:33:29 15 MR. LOCKERBY: Of Exhibit 6, yes.</p> <p>10:33:33 16 BY MR. LOCKERBY:</p> <p>10:33:33 17 Q. Starting under the September 29, 2018, entry</p> <p>10:33:38 18 for communication between Justin Levitt and Allison</p> <p>10:33:42 19 Riggs, there are a series of names. On the bottom of</p> <p>10:33:49 20 that page, the first entry is August 5th, 2017, for</p> <p>10:33:54 21 Augustine Tsibi-Gyan. I may be butchering the name,</p> <p>10:34:00 22 but -- and then continuing on the following page and</p> <p>10:34:05 23 ending on the page after that on August 10, 2017.</p> <p>10:34:11 24 Are all of these communications with</p> <p>10:34:13 25 individuals that you contend are clients of yours?</p>
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<p>10:30:18 1 MR. BRIDGES: Objection. Argumentative.</p> <p>10:30:19 2 You may answer.</p> <p>10:30:22 3 THE WITNESS: Possibly.</p> <p>10:30:33 4 BY MR. LOCKERBY:</p> <p>10:30:34 5 Q. Without divulging the substance of any</p> <p>10:30:38 6 communications, can you state what it is that you were</p> <p>10:30:44 7 retained to do as a nonexpert witness or consultant?</p> <p>10:30:54 8 A. I don't know that I can without divulging the</p> <p>10:31:04 9 substance of the communications.</p> <p>10:31:05 10 Q. Are you being compensated or have you been</p> <p>10:31:07 11 compensated for your consulting work?</p> <p>10:31:12 12 A. I have not. I am not. I should clarify: In</p> <p>10:31:20 13 this case.</p> <p>10:31:35 14 MR. LOCKERBY: We'll come back to that later.</p> <p>10:31:38 15 Meanwhile, I'd like to have marked as Exhibit 6</p> <p>10:31:44 16 the privilege log for subpoenas to Loyola Law School and</p> <p>10:31:49 17 Justin Levitt.</p> <p>10:31:49 18 (Whereupon the document referred to is marked</p> <p>10:31:49 19 by the reporter as Defense Exhibit 6 for</p> <p>10:31:49 20 identification.)</p> <p>10:31:49 21 BY MR. LOCKERBY:</p> <p>10:32:11 22 Q. You've been handed what's been marked as</p> <p>10:32:13 23 Exhibit 6, a privilege log for subpoenas to Loyola Law</p> <p>10:32:17 24 School and Justin Levitt. And if you could turn to the</p> <p>10:32:25 25 next-to-last page toward the bottom. There are a series</p>	<p>10:34:20 1 A. No.</p> <p>10:34:34 2 Q. So were any of these individuals clients of</p> <p>10:34:37 3 yours?</p> <p>10:34:37 4 A. They may have believed so.</p> <p>10:34:38 5 Q. Did you lead them to believe that they were</p> <p>10:34:41 6 clients of yours?</p> <p>10:34:42 7 A. Not intentionally.</p> <p>10:34:45 8 Q. What causes you to state that they may have</p> <p>10:34:50 9 believed they were clients of yours?</p> <p>10:34:52 10 A. I wrote to them and identified myself as a</p> <p>10:35:00 11 lawyer and a law professor. And in the course of the</p> <p>10:35:11 12 conversation, they may have sought legal assistance.</p> <p>10:35:17 13 And beyond that, I don't know in what capacity they</p> <p>10:35:20 14 thought I was acting.</p> <p>10:35:22 15 Q. Since receiving the subpoenas from the</p> <p>10:35:27 16 defendants in this case, have you contacted any of these</p> <p>10:35:31 17 individuals to see whether they thought that you had an</p> <p>10:35:36 18 attorney-client relationship?</p> <p>10:35:36 19 A. I have not.</p> <p>10:35:37 20 Q. And did you provide any legal advice to any of</p> <p>10:35:44 21 these individuals?</p> <p>10:35:51 22 MR. BRIDGES: I'm going to object. That's</p> <p>10:35:52 23 vague and ambiguous.</p> <p>10:35:53 24 You may answer, if you understand.</p> <p>10:36:03 25 THE WITNESS: Can you clarify what you mean by</p>

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<p>10:36:05 1 "legal advice."</p> <p>10:36:06 2 BY MR. LOCKERBY:</p> <p>10:36:06 3 Q. Well, on the privilege log every single entry</p> <p>10:36:10 4 says, "Communication Re Legal Advice." So as that term</p> <p>10:36:14 5 is used on the privilege log, were you providing legal</p> <p>10:36:19 6 advice?</p> <p>10:36:19 7 MR. BRIDGES: Okay. On that I'm going to</p> <p>10:36:21 8 object. And I'm going to respond because, again, my</p> <p>10:36:24 9 firm interposed that objection. And if you want to know</p> <p>10:36:27 10 why that objection was interposed, I will respond. But</p> <p>10:36:32 11 the objection was interposed by counsel, not by the</p> <p>10:36:35 12 client. So this is not a question about which</p> <p>10:36:40 13 Mr. Levitt would have relevant information.</p> <p>10:36:40 14 BY MR. LOCKERBY:</p> <p>10:36:46 15 Q. Mr. Levitt, you have a law degree from Harvard.</p> <p>10:36:49 16 A. Uh-huh.</p> <p>10:36:50 17 Q. You've been a professor of law at Loyola. Been</p> <p>10:36:53 18 practicing law for decades now.</p> <p>10:36:54 19 A. Correct.</p> <p>10:36:55 20 Q. You understand what it means to render legal</p> <p>10:36:57 21 advice, don't you?</p> <p>10:36:57 22 A. I do.</p> <p>10:36:58 23 Q. And regardless of who prepared the privilege</p> <p>10:37:03 24 log, the question is a simple one. Did you provide</p> <p>10:37:07 25 legal advice to any of the individuals named on this</p>	<p>10:38:57 1 their potential legal remedies might be?</p> <p>10:38:59 2 A. In some ways.</p> <p>10:39:01 3 Q. And at the time that you did these things, you</p> <p>10:39:07 4 had identified yourself to these individuals as a</p> <p>10:39:11 5 professor who was doing research; isn't that right?</p> <p>10:39:13 6 A. Correct.</p> <p>10:39:14 7 Q. So how is it that somebody would expect that he</p> <p>10:39:28 8 or she would have a -- an attorney-client relationship</p> <p>10:39:31 9 with a law professor in California doing research?</p> <p>10:39:35 10 MR. BRIDGES: Objection. Calls for</p> <p>10:39:36 11 speculation.</p> <p>10:39:40 12 THE WITNESS: I would have said the same thing.</p> <p>10:39:41 13 I don't know what they anticipated or what they might</p> <p>10:39:45 14 have thought.</p> <p>10:39:45 15 BY MR. LOCKERBY:</p> <p>10:39:46 16 Q. And you're simply speculating that these</p> <p>10:39:49 17 individuals might have considered the conversation to be</p> <p>10:39:55 18 privileged and confidential; isn't that right?</p> <p>10:39:57 19 A. I consider it possible. I -- I'm not</p> <p>10:40:03 20 speculating that they considered it confidential. I do</p> <p>10:40:09 21 not know whether they would have been able to evaluate</p> <p>10:40:11 22 whether it was privileged.</p> <p>10:40:12 23 Q. And not every communication that's confidential</p> <p>10:40:16 24 is for the purpose of seeking legal advice; isn't that</p> <p>10:40:16 25 right?</p>
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<p>10:37:09 1 privilege log?</p> <p>10:37:10 2 MR. BRIDGES: Objection. Argumentative. And</p> <p>10:37:13 3 that's not the basis for an attorney-client objection.</p> <p>10:37:13 4 BY MR. LOCKERBY:</p> <p>10:37:20 5 Q. Okay. Well, there's an objection.</p> <p>10:37:22 6 Now if you can answer the question, please.</p> <p>10:37:25 7 A. I did not -- it depends on what you mean by</p> <p>10:37:31 8 "legal advice," I think. So -- and I'm not attempting</p> <p>10:37:36 9 to be difficult; but depending on what you mean by</p> <p>10:37:39 10 providing legal advice, the answer may be different.</p> <p>10:37:42 11 Q. What does providing legal advice mean to you as</p> <p>10:37:45 12 a member of the California Bar and a law professor?</p> <p>10:37:49 13 A. It could mean the -- an explanation of what the</p> <p>10:37:56 14 law states or requires. It could mean an attempt to</p> <p>10:38:02 15 guide individuals as to their rights and</p> <p>10:38:07 16 responsibilities under the law. It could mean a</p> <p>10:38:12 17 discussion of potential legal remedies that they might</p> <p>10:38:17 18 pursue.</p> <p>10:38:19 19 Q. Did you explain to any of these individuals</p> <p>10:38:22 20 what the law requires?</p> <p>10:38:28 21 A. In some ways.</p> <p>10:38:30 22 Q. Did you advise any of these individuals</p> <p>10:38:34 23 regarding their rights and responsibilities?</p> <p>10:38:51 24 A. In some ways.</p> <p>10:38:52 25 Q. And did you advise these individuals as to what</p>	<p>10:40:20 1 A. Correct.</p> <p>10:40:20 2 Q. For example, if you asked an individual whether</p> <p>10:40:25 3 he or she was willing to talk to a newspaper reporter</p> <p>10:40:30 4 and the individual said no, that would be an example of</p> <p>10:40:36 5 a conversation that might be confidential, but not for</p> <p>10:40:40 6 the purpose of getting legal advice?</p> <p>10:40:41 7 A. Correct.</p> <p>10:41:12 8 Q. Have you ever done any research into the code</p> <p>10:41:18 9 of Virginia?</p> <p>10:41:18 10 A. Yes.</p> <p>10:41:19 11 Q. Can you recall what provisions of the Virginia</p> <p>10:41:23 12 code you researched?</p> <p>10:41:27 13 A. I can recall several. I can tell you that I</p> <p>10:41:30 14 cannot recall all of the ones that I've researched.</p> <p>10:41:33 15 Q. What are the ones that you can recall?</p> <p>10:41:41 16 A. Provisions concerning petitions for ballot</p> <p>10:41:46 17 access, provisions concerning eligibility to vote,</p> <p>10:41:56 18 con -- provisions concerning election administration,</p> <p>10:42:04 19 provisions concerning redistricting. I don't know -- I</p> <p>10:42:15 20 cannot recall now whether I have researched provisions</p> <p>10:42:17 21 concerning campaign finance in Virginia as well.</p> <p>10:42:23 22 Q. With respect to those provisions of the</p> <p>10:42:26 23 Virginia code that you just identified, did you discuss</p> <p>10:42:29 24 any of them with the individuals named in the privilege</p> <p>10:42:35 25 log that's been marked as Exhibit 6?</p>

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<p>10:42:36 1 MR. BRIDGES: Objection. That invades the</p> <p>10:42:39 2 attorney-client privilege as to what the scope of those</p> <p>10:42:42 3 conversations may have been. For the same reason we've</p> <p>10:42:45 4 interposed that objection, I interpose it here.</p> <p>10:42:48 5 And instruct you not to answer that question as</p> <p>10:42:49 6 phrased.</p> <p>10:42:56 7 BY MR. LOCKERBY:</p> <p>10:42:56 8 Q. And I assume you're following that instruction?</p> <p>10:42:58 9 A. I will follow the instruction of my counsel.</p> <p>10:43:00 10 MR. LOCKERBY: I'd like to have this marked as</p> <p>10:43:02 11 Exhibit 7, please.</p> <p>10:43:02 12 (Whereupon the document referred to is marked</p> <p>10:43:02 13 by the reporter as Defense Exhibit 7 for</p> <p>10:43:16 14 identification.)</p> <p>10:43:16 15 THE WITNESS: Thank you.</p> <p>10:43:16 16 BY MR. LOCKERBY:</p> <p>10:43:19 17 Q. You've been handed what's been marked as</p> <p>10:43:22 18 Exhibit 7, a copy of Virginia Code Section 8.01-223.2.</p> <p>10:43:33 19 Have you ever reviewed this provision of the</p> <p>10:43:35 20 code of Virginia?</p> <p>10:43:36 21 A. I have not.</p> <p>10:43:37 22 Q. Are you familiar with the term "SLAPP statute"</p> <p>10:43:45 23 or "anti-SLAPP statute"?</p> <p>10:43:47 24 A. I am.</p> <p>10:43:49 25 Q. What's your understanding of what that is?</p>	<p>10:45:09 1 A. Correct.</p> <p>10:45:09 2 Q. The very first provision has a defense of -- or</p> <p>10:45:17 3 definition, rather, of "barratry"?</p> <p>10:45:20 4 A. Uh-huh.</p> <p>10:45:20 5 Q. Is that a term with which you're familiar?</p> <p>10:45:23 6 A. Yes.</p> <p>10:45:24 7 Q. What's your understanding of what barratry is?</p> <p>10:45:27 8 A. Barratry is often defined as I see that it is</p> <p>10:45:30 9 defined here. It is a purported restriction on, as it</p> <p>10:45:40 10 says here, stirring up or fomenting litigation.</p> <p>10:45:58 11 MR. LOCKERBY: I'd like to have this marked as</p> <p>10:46:01 12 Exhibit 9, please.</p> <p>10:46:01 13 (Whereupon the document referred to is marked</p> <p>10:46:01 14 by the reporter as Defense Exhibit 9 for</p> <p>10:46:18 15 identification.)</p> <p>10:46:18 16 THE WITNESS: Thank you.</p> <p>10:46:19 17 BY MR. LOCKERBY:</p> <p>10:46:25 18 Q. You've been handed what's been marked as</p> <p>10:46:27 19 Exhibit 9, a copy of Virginia Code Section 18.2-499.</p> <p>10:46:36 20 Have you ever seen this provision of the</p> <p>10:46:40 21 Virginia code?</p> <p>10:46:41 22 A. I have not.</p> <p>10:46:48 23 MR. LOCKERBY: I'd like to have this marked as</p> <p>10:46:50 24 Exhibit 10, please.</p> <p>10:46:50 25 ///</p>
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<p>10:43:51 1 A. SLAPP generally describes a strategic lawsuit</p> <p>10:43:56 2 against public participation. I believe that's the</p> <p>10:43:58 3 acronym. And it is a lawsuit filed often in order to</p> <p>10:44:06 4 deter civic participation on matters of public</p> <p>10:44:09 5 importance. Anti-SLAPP statutes occasionally provide</p> <p>10:44:15 6 sometimes immunity, sometimes particular procedural</p> <p>10:44:20 7 venues, or -- or pathways to address those sorts of</p> <p>10:44:25 8 claims.</p> <p>10:44:26 9 MR. LOCKERBY: I'd like to have this marked as</p> <p>10:44:28 10 Exhibit 8, please.</p> <p>10:44:28 11 (Whereupon the document referred to is marked</p> <p>10:44:28 12 by the reporter as Defense Exhibit 8 for</p> <p>10:44:38 13 identification.)</p> <p>10:44:38 14 MR. BRIDGES: Oh, I'm sorry.</p> <p>10:44:39 15 MR. LOCKERBY: That's all right.</p> <p>10:44:40 16 MR. BRIDGES: Thank you.</p> <p>10:44:49 17 THE WITNESS: Thank you.</p> <p>10:44:50 18 BY MR. LOCKERBY:</p> <p>10:44:52 19 Q. You've been handed what's been marked as</p> <p>10:44:54 20 Exhibit 8, which is copy of Virginia Code Section</p> <p>10:45:00 21 18.2-451.</p> <p>10:45:03 22 Are you familiar with this provision of the</p> <p>10:45:04 23 code of Virginia?</p> <p>10:45:06 24 A. I am not.</p> <p>10:45:06 25 Q. So it's not something you've seen before?</p>	<p>10:46:50 1 (Whereupon the document referred to is marked</p> <p>10:46:50 2 by the reporter as Defense Exhibit 10 for</p> <p>10:47:05 3 identification.)</p> <p>10:47:05 4 THE WITNESS: Thank you.</p> <p>10:47:06 5 BY MR. LOCKERBY:</p> <p>10:47:09 6 Q. You've been handed what's been marked as</p> <p>10:47:11 7 Exhibit 10, a copy of Virginia Code Section 18.2-500.</p> <p>10:47:19 8 Have you ever seen this provision of the</p> <p>10:47:22 9 Virginia code?</p> <p>10:47:23 10 A. I have not.</p> <p>10:47:42 11 MR. LOCKERBY: I'd like to have this marked as</p> <p>10:47:43 12 Exhibit 11, please.</p> <p>10:47:43 13 (Whereupon the document referred to is marked</p> <p>10:47:43 14 by the reporter as Defense Exhibit 11 for</p> <p>10:47:58 15 identification.)</p> <p>10:47:58 16 THE WITNESS: Thank you.</p> <p>10:47:59 17 BY MR. LOCKERBY:</p> <p>10:48:04 18 Q. You've been handed what's been marked as</p> <p>10:48:07 19 Exhibit 11, which is an October 17, 2008, letter to the</p> <p>10:48:17 20 Attorney General of the United States and the acting</p> <p>10:48:20 21 U.S. Attorney for the District of Connecticut from</p> <p>10:48:23 22 Robert F. Bauer.</p> <p>10:48:25 23 Why don't you take a minute, please, to look at</p> <p>10:48:27 24 this. I realize this isn't from you. And then I'll</p> <p>10:48:30 25 have a few questions about it.</p>

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<p>10:48:32 1 A. Okay.</p> <p>10:50:45 2 Q. Have you ever seen this correspondence before?</p> <p>10:50:48 3 A. Not that I know of.</p> <p>10:50:49 4 Q. Did you have any role in drafting this</p> <p>10:50:53 5 correspondence?</p> <p>10:50:53 6 A. Not to my recollection.</p> <p>10:50:57 7 Q. Mr. Bauer was the outside general counsel of</p> <p>10:51:04 8 the Obama campaign during the time that you were</p> <p>10:51:07 9 national voter protection counsel; correct?</p> <p>10:51:09 10 A. Correct.</p> <p>10:51:09 11 Q. Were you aware that he had requested an</p> <p>10:51:17 12 investigation of -- and I'm quoting now from Page 2 --</p> <p>10:51:23 13 "the systematic development and dissemination of</p> <p>10:51:27 14 unsupported spurious allegations of vote fraud"?</p> <p>10:51:30 15 MR. BRIDGES: Objection. Vague and ambiguous</p> <p>10:51:31 16 as to time.</p> <p>10:51:33 17 MR. LEBOWITZ: Join the objection.</p> <p>10:51:35 18 MR. GORMAN: Can we have an agreement that an</p> <p>10:51:38 19 objection for one is good for all so we don't keep</p> <p>10:51:41 20 repeating ourselves?</p> <p>10:51:42 21 MR. LOCKERBY: We do. Although I would say</p> <p>10:51:43 22 that plaintiff's -- counsel for plaintiff's counsel is</p> <p>10:51:49 23 entitled to object only with respect to claims of work</p> <p>10:51:53 24 product.</p> <p>10:51:55 25 MR. GORMAN: To the extent an objection is not</p>	<p>10:53:05 1 aware before the letter was written. I became aware</p> <p>10:53:08 2 afterward, yes.</p> <p>10:53:15 3 BY MR. LOCKERBY:</p> <p>10:53:15 4 Q. Did you ever discuss that request with anybody</p> <p>10:53:19 5 else?</p> <p>10:53:30 6 A. I don't know whether I can answer that without</p> <p>10:53:33 7 invading a privilege that, again, I can't waive between</p> <p>10:53:36 8 the organization and myself. Externally, I don't recall</p> <p>10:53:51 9 whether I have discussed that call for a further</p> <p>10:53:58 10 investigation with individuals outside of those to whom</p> <p>10:54:03 11 I owe an attorney-client privilege.</p> <p>10:54:18 12 MR. LOCKERBY: I'd like to have this marked as</p> <p>10:54:20 13 Exhibit 12, please.</p> <p>10:54:20 14 (Whereupon the document referred to is marked</p> <p>10:54:20 15 by the reporter as Defense Exhibit 12 for</p> <p>10:54:36 16 identification.)</p> <p>10:54:36 17 THE WITNESS: Thank you.</p> <p>10:54:50 18 BY MR. LOCKERBY:</p> <p>10:54:51 19 Q. Exhibit 12 is a publication by J. Christian</p> <p>10:54:57 20 Adams dated June 4, 2013, in the PJMedia.com entitled</p> <p>10:55:06 21 "White House Counsel Robert Bauer, Architect of IRS</p> <p>10:55:11 22 Abuse," question mark.</p> <p>10:55:12 23 And on Page 3, top of the page, Mr. Adams</p> <p>10:55:23 24 writes, "During the 2008 election, while representing</p> <p>10:55:27 25 the Obama campaign, Bauer sent a threatening letter to</p>
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<p>10:51:58 1 applicable to us, I mean --</p> <p>10:52:00 2 MR. LOCKERBY: Yes.</p> <p>10:52:01 3 MR. GORMAN: -- it wouldn't apply. Sure. But</p> <p>10:52:02 4 I don't want to keep repeating everybody. I just want</p> <p>10:52:05 5 to make sure all the objections are preserved.</p> <p>10:52:07 6 MR. LEBOWITZ: I appreciate that.</p> <p>10:52:08 7 MR. LOCKERBY: But we don't agree that -- I</p> <p>10:52:09 8 mean, certainly -- we can stipulate that you're part of</p> <p>10:52:12 9 the amen chorus, but we don't agree that you have</p> <p>10:52:16 10 standing to object to anything except with respect to</p> <p>10:52:19 11 the assertion by two of the law firms of work product.</p> <p>10:52:24 12 But if we have the stipulation, I suppose it doesn't</p> <p>10:52:26 13 matter.</p> <p>10:52:29 14 THE WITNESS: Can I ask for the question again,</p> <p>10:52:31 15 please.</p> <p>10:52:33 16 MR. LOCKERBY: Yes.</p> <p>10:52:34 17 If you could read it back, please.</p> <p>10:52:35 18 (The record is read by the reporter as</p> <p>10:52:35 19 follows:</p> <p>10:51:11 20 "Q. Were you aware that he had requested an</p> <p>10:51:17 21 investigation of -- and I'm quoting now from</p> <p>10:51:21 22 Page 2 -- 'the systematic development and</p> <p>10:51:26 23 dissemination of unsupported spurious</p> <p>10:51:29 24 allegations of vote fraud?")</p> <p>10:53:02 25 THE WITNESS: I don't recall whether I was</p>	<p>10:55:31 1 the justice department demanding criminal investigations</p> <p>10:55:34 2 of people who had the audacity to speak" -- and the word</p> <p>10:55:39 3 "speak" is italicized -- "about voter fraud. Bauer even</p> <p>10:55:43 4 singled out Sarah Palin in the letter. Anyone who</p> <p>10:55:46 5 'developed or disseminated' information about voter</p> <p>10:55:50 6 fraud to Bauer deserved the heavy boot of a criminal</p> <p>10:55:53 7 investigation. Read the letter. It reveals a nasty,</p> <p>10:55:57 8 thuggish, and lawless attitude towards political</p> <p>10:56:02 9 opposition."</p> <p>10:56:02 10 Have you ever read this particular article by</p> <p>10:56:04 11 Mr. Adams before?</p> <p>10:56:05 12 A. I don't believe that I have.</p> <p>10:56:07 13 Q. Did you agree with Mr. Bauer that those who</p> <p>10:56:14 14 made the claim of voter fraud during the 2008 election</p> <p>10:56:19 15 should be investigated by the justice department?</p> <p>10:56:22 16 A. I don't believe that that's Mr. Bauer's</p> <p>10:56:27 17 claim -- that's not how I would characterize Mr. Bauer's</p> <p>10:56:31 18 statement in his letter, and so I can't say whether I</p> <p>10:56:34 19 agree or disagree with that characterization.</p> <p>10:56:37 20 Q. Did you agree with the request, or requests,</p> <p>10:56:48 21 that Mr. Bauer was making in the letter that was marked</p> <p>10:56:54 22 as Exhibit 11 to your deposition?</p> <p>10:57:18 23 A. I can't say whether I agreed with it at the</p> <p>10:57:21 24 time because, again, I don't know whether I saw this</p> <p>10:57:23 25 before it was produced. I would agree with part of it</p>

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<p>10:57:30 1 now.</p> <p>10:57:36 2 Q. Which part of it would you agree with?</p> <p>10:57:39 3 A. Involvement by justice department officials in</p> <p>10:57:44 4 supporting partisan political campaign activity. I</p> <p>10:57:49 5 would agree with a call for an investigation into the</p> <p>10:57:52 6 use of federal government resources to support partisan</p> <p>10:57:57 7 campaign activity.</p> <p>10:57:58 8 Q. Would you agree with investigating people who</p> <p>10:58:02 9 make allegations of voter fraud?</p> <p>10:58:05 10 A. It would depend on the context.</p> <p>10:58:07 11 Q. Well, under what circumstances would you</p> <p>10:58:09 12 advocate criminal investigations of people who allege</p> <p>10:58:14 13 that there's been voter fraud?</p> <p>10:58:16 14 A. If the allegations themselves amounted to</p> <p>10:58:19 15 potential crimes, then I would support an investigation</p> <p>10:58:24 16 of those potential crimes.</p> <p>10:58:25 17 Q. Under what circumstances do you contend that</p> <p>10:58:28 18 alleging voter fraud would constitute a crime?</p> <p>10:58:32 19 A. If the allegations were undertaken with a</p> <p>10:58:42 20 specific intent conspiring with others to intimidate</p> <p>10:58:48 21 individuals from exercising their own First Amendment</p> <p>10:58:53 22 rights, that would be a conspiracy under the Federal</p> <p>10:58:56 23 Criminal Code; and I would support an investigation into</p> <p>10:58:59 24 such conspiracy.</p> <p>10:59:00 25 Q. And how would you go about determining whether</p>	<p>10:59:58 1 BY MR. LOCKERBY:</p> <p>10:59:58 2 Q. -- conspiring with others to intimidate</p> <p>11:00:02 3 individuals?</p> <p>11:00:02 4 MR. BRIDGES: Objection. Calls for</p> <p>11:00:03 5 speculation.</p> <p>11:00:04 6 BY MR. LOCKERBY:</p> <p>11:00:05 7 Q. Okay. Well, subject to the objection, you can</p> <p>11:00:06 8 answer.</p> <p>11:00:06 9 A. It's highly context-specific, and I don't know</p> <p>11:00:10 10 that I can answer that in the abstract.</p> <p>11:00:12 11 Q. So it's like the classic definition of</p> <p>11:00:14 12 pornography. You know it when you see it, but you can't</p> <p>11:00:19 13 articulate a principled standard?</p> <p>11:00:21 14 MR. BRIDGES: Objection. Argumentative.</p> <p>11:00:23 15 MR. LEBOWITZ: Mischaracterizes testimony.</p> <p>11:00:25 16 THE WITNESS: That's not what I said.</p> <p>11:00:26 17 The investigation into criminal intent depends</p> <p>11:00:30 18 on the facts and circumstances of any given case. It's</p> <p>11:00:35 19 not -- it is not merely a matter of knowing it when you</p> <p>11:00:40 20 see it, but the context actually would set the</p> <p>11:00:42 21 parameters for an investigation. All that said, I'm not</p> <p>11:00:48 22 a criminal prosecutor and -- nor am I a federal criminal</p> <p>11:00:55 23 investigating agent.</p> <p>11:01:09 24 BY MR. LOCKERBY:</p> <p>11:01:10 25 Q. Now, during the Obama administration, John</p>
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<p>10:59:04 1 someone had the specific intent to which you've</p> <p>10:59:07 2 referred?</p> <p>10:59:08 3 MR. LEBOWITZ: Objection. Calls for</p> <p>10:59:09 4 speculation.</p> <p>10:59:11 5 THE WITNESS: Yeah. That's --</p> <p>10:59:12 6 MR. BRIDGES: Join.</p> <p>10:59:13 7 THE WITNESS: That's a hypothetical question.</p> <p>10:59:14 8 I -- I don't know that I can answer in the abstract.</p> <p>10:59:18 9 BY MR. LOCKERBY:</p> <p>10:59:19 10 Q. Your testimony -- I asked you, "Under what</p> <p>10:59:21 11 circumstances do you contend that alleging voter fraud</p> <p>10:59:24 12 would constitute a crime?"</p> <p>10:59:26 13 A. Uh-huh.</p> <p>10:59:27 14 Q. And your answer was, "If the allegations were</p> <p>10:59:30 15 undertaken with a specific intent conspiring with others</p> <p>10:59:34 16 to intimidate individuals from exercising their own</p> <p>10:59:39 17 First Amendment rights, that would be a conspiracy under</p> <p>10:59:43 18 the Federal Criminal Code; and I would support an</p> <p>10:59:47 19 investigation into such conspiracy."</p> <p>10:59:48 20 So my question was, How would -- would you go</p> <p>10:59:51 21 about determining whether someone had a specific</p> <p>10:59:54 22 intent --</p> <p>10:59:57 23 MR. BRIDGES: Objection. That calls for</p> <p>10:59:58 24 speculation.</p> <p>10:59:58 25 ///</p>	<p>11:01:16 1 Christian Adams and Hans von Spakovsky wrote a series of</p> <p>11:01:23 2 articles critical of the voting rights section at the</p> <p>11:01:26 3 Department of Justice; isn't that right?</p> <p>11:01:29 4 A. Of the voting section?</p> <p>11:01:30 5 Q. The voting section.</p> <p>11:01:31 6 A. I would agree with that characterization, yes.</p> <p>11:01:36 7 Q. And you saw at least some of those</p> <p>11:01:39 8 publications, did you not?</p> <p>11:01:39 9 A. Correct.</p> <p>11:01:40 10 Q. And are you familiar with Mr. von Spakovsky?</p> <p>11:03:01 11 A. Yes.</p> <p>11:03:01 12 Q. How are you familiar with him?</p> <p>11:03:04 13 A. He also works in the election field. He's held</p> <p>11:03:10 14 various positions, including government positions --</p> <p>11:03:12 15 government positions, at various times.</p> <p>11:03:16 16 Q. And is it fair to say that you don't -- you</p> <p>11:03:25 17 don't agree with Mr. Spakovsky on a number of issues</p> <p>11:03:28 18 related to election law?</p> <p>11:03:29 19 A. On a number of issues. That's correct. On</p> <p>11:03:34 20 some others, we agree.</p> <p>11:03:38 21 Q. On what subjects do you agree with Mr. von</p> <p>11:03:43 22 Spakovsky?</p> <p>11:03:43 23 A. I couldn't give you a complete list. I'm not</p> <p>11:03:45 24 sure that I know all of his positions. I know that he</p> <p>11:03:50 25 correctly feels very strongly about the rights of</p>

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<p>11:03:52 1 military and overseas voters. I share his concerns. Or</p> <p>11:03:58 2 I share -- I shouldn't say that. I share some of the</p> <p>11:04:00 3 concerns that he's previously articulated that I know</p> <p>11:04:04 4 of.</p> <p>11:04:09 5 MR. LOCKERBY: I've like to have this marked as</p> <p>11:04:13 6 Exhibit 13, please.</p> <p>11:04:13 7 (Whereupon the document referred to is marked</p> <p>11:04:13 8 by the reporter as Defense Exhibit 13 for</p> <p>11:04:13 9 identification.)</p> <p>11:04:13 10 BY MR. LOCKERBY:</p> <p>11:04:40 11 Q. Exhibit 13 is a February 5, 2015, PJ Media</p> <p>11:04:48 12 article by J. Christian Adams on the subject "Obama and</p> <p>11:04:53 13 Holder Cry Wolf on Voting Rights."</p> <p>11:04:57 14 Have you ever seen this before?</p> <p>11:04:58 15 A. I can't recall. It's possible.</p> <p>11:05:09 16 Q. As of the date of this particular article, had</p> <p>11:05:15 17 you begun your secondment at DOJ yet?</p> <p>11:05:19 18 A. I had not.</p> <p>11:05:20 19 Q. So this one was before your tenure?</p> <p>11:05:22 20 A. Correct.</p> <p>11:05:38 21 MR. LOCKERBY: I'd like to have this marked as</p> <p>11:05:39 22 Exhibit 14, please.</p> <p>11:05:39 23 (Whereupon the document referred to is marked</p> <p>11:05:39 24 by the reporter as Defense Exhibit 14 for</p> <p>11:05:56 25 identification.)</p>	<p>11:07:39 1 A. I -- I wouldn't agree with that</p> <p>11:07:41 2 characterization. It's the Every Single One series that</p> <p>11:07:44 3 is mentioned in the first sentence.</p> <p>11:07:46 4 Q. I was quoting. I wasn't characterizing.</p> <p>11:07:48 5 A. Yeah. I -- I wouldn't -- when you say, "that's</p> <p>11:07:54 6 the," those aren't words that I would use. I am</p> <p>11:07:58 7 familiar with PJ Media based on the Every Single One</p> <p>11:08:00 8 series.</p> <p>11:08:04 9 Q. Have you seen the discovery request that the</p> <p>11:08:07 10 plaintiffs have served on defendants in this case?</p> <p>11:08:10 11 A. I have not.</p> <p>11:08:11 12 Q. Okay. Were you aware of the fact that they</p> <p>11:08:13 13 specifically reference PJ Media?</p> <p>11:08:16 14 A. I was not.</p> <p>11:08:34 15 Q. Are you familiar with an individual named</p> <p>11:08:37 16 Richard Hasen, H-a-s-e-n?</p> <p>11:08:41 17 A. Hasen is how --</p> <p>11:08:41 18 Q. Hasen.</p> <p>11:08:43 19 A. -- he pronounces his name.</p> <p>11:08:45 20 Q. Excuse me.</p> <p>11:08:46 21 A. Yes.</p> <p>11:08:46 22 Q. How do you know him?</p> <p>11:08:47 23 A. He was a colleague at Loyola Law School. I</p> <p>11:08:50 24 don't recall when I first became aware of him either,</p> <p>11:08:54 25 but he's also an individual in the election and voting</p>
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<p>11:05:56 1 THE WITNESS: Thank you.</p> <p>11:06:04 2 BY MR. LOCKERBY:</p> <p>11:06:05 3 Q. Exhibit 14 is an April 6, 2016, article by Hans</p> <p>11:06:14 4 von Spakovsky and J. Christian Adams, again, in PJ</p> <p>11:06:20 5 Media, entitled "Exclusive: Meet the Radical Lawyers</p> <p>11:06:23 6 the DOJ Hired to Oversee Elections."</p> <p>11:06:26 7 Have you seen this article before?</p> <p>11:06:27 8 A. I have.</p> <p>11:06:29 9 Q. Were you happy about it?</p> <p>11:06:37 10 A. No.</p> <p>11:06:50 11 Q. And had you previously been familiar with the</p> <p>11:06:54 12 publication PJ Media?</p> <p>11:06:56 13 A. Yes.</p> <p>11:06:56 14 Q. How were you familiar with it?</p> <p>11:06:59 15 A. I can't recall when I first became familiar</p> <p>11:07:04 16 with it.</p> <p>11:07:07 17 Among other things, the first sentence of this</p> <p>11:07:12 18 piece refers to a prior series published in PJ Media</p> <p>11:07:16 19 which I'm also aware of. I don't recall whether I was</p> <p>11:07:20 20 familiar with them before that series or not. I may</p> <p>11:07:24 21 well have been.</p> <p>11:07:25 22 Q. That's the reference to the, quote, Hiring of</p> <p>11:07:30 23 ideologically leftist and partisan lawyers to fill the</p> <p>11:07:34 24 career ranks of the lawyers in the Department of</p> <p>11:07:37 25 Justice's civil rights division?</p>	<p>11:08:57 1 rights field.</p> <p>11:08:59 2 Q. Other than at Loyola, have you worked with him</p> <p>11:09:04 3 anywhere else?</p> <p>11:09:07 4 A. No. I have assisted him with various things,</p> <p>11:09:13 5 but I would not say I have worked with him outside of</p> <p>11:09:16 6 Loyola.</p> <p>11:09:19 7 Q. What types of things have you assisted him</p> <p>11:09:22 8 with?</p> <p>11:09:24 9 A. Manuscripts and the like. Faculty members</p> <p>11:09:29 10 generally read and provide comment on various</p> <p>11:09:34 11 publications before they're published. I have also</p> <p>11:09:42 12 assisted him with a blog that he runs from time to time.</p> <p>11:09:45 13 He's asked me if I would maintain the blog in periods</p> <p>11:09:48 14 when he's away or otherwise engaged.</p> <p>11:10:26 15 Q. Have you seen articles that Mr. Adams has</p> <p>11:10:30 16 published critical of Mr. Hasen?</p> <p>11:10:34 17 A. Yes.</p> <p>11:10:34 18 Q. And you weren't happy about those either, were</p> <p>11:10:38 19 you?</p> <p>11:10:38 20 MR. LEBOWITZ: Objection.</p> <p>11:10:39 21 MR. BRIDGES: Objection. Vague and ambiguous.</p> <p>11:10:42 22 THE WITNESS: I'd have to see the articles.</p> <p>11:11:02 23 MR. LOCKERBY: I'd like to have this marked as</p> <p>11:11:04 24 Exhibit 15, please.</p> <p>11:11:04 25 ///</p>

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<p>11:11:04 1 (Whereupon the document referred to is marked</p> <p>11:11:04 2 by the reporter as Defense Exhibit 15 for</p> <p>11:11:23 3 identification.)</p> <p>11:11:23 4 THE WITNESS: Thank you.</p> <p>11:11:24 5 BY MR. LOCKERBY:</p> <p>11:11:32 6 Q. Exhibit 15 is another article published by</p> <p>11:11:36 7 Mr. Adams and PJ Media, this one dated October 5, 2015,</p> <p>11:11:43 8 entitled "Former DOJ Head Michael Mukasey Hits Obama's</p> <p>11:11:48 9 DOJ Voting Section."</p> <p>11:11:50 10 Did you see this at the time it was published?</p> <p>11:11:54 11 A. I can't remember. It's possible.</p> <p>11:12:01 12 Q. And this was published during your tenure at</p> <p>11:12:05 13 DOJ during the time that you were on secondment;</p> <p>11:12:05 14 correct?</p> <p>11:12:10 15 A. Correct.</p> <p>11:13:06 16 MR. LOCKERBY: I'd like to have this marked as</p> <p>11:13:08 17 Exhibit 16, please.</p> <p>11:13:08 18 (Whereupon the document referred to is marked</p> <p>11:13:08 19 by the reporter as Defense Exhibit 16 for</p> <p>11:13:25 20 identification.)</p> <p>11:13:25 21 THE WITNESS: Thank you.</p> <p>11:13:27 22 MR. LOCKERBY: Exhibit 16 is a document that</p> <p>11:13:28 23 you've produced.</p> <p>11:13:30 24 And just for the record, when we got the</p> <p>11:13:32 25 documents -- the document production on behalf of Loyola</p>	<p>11:15:19 1 voted in 1998, 1999, 2000, 2002, 2003, 2004, 2005, 2006,</p> <p>11:15:32 2 and 2008? Do you see that?</p> <p>11:15:35 3 A. I see that's reflected here, yes.</p> <p>11:15:37 4 Q. And how did this document or documents like</p> <p>11:15:41 5 this come into your possession?</p> <p>11:15:43 6 A. I don't recall. I would be guessing, and I</p> <p>11:15:51 7 don't --</p> <p>11:15:51 8 MR. BRIDGES: Do not guess.</p> <p>11:15:52 9 THE WITNESS: -- want to guess.</p> <p>11:16:04 10 I don't remember reviewing this document in</p> <p>11:16:06 11 particular -- the substance of this document in</p> <p>11:16:11 12 preparing this production. And so I can only offer an</p> <p>11:16:19 13 assumption as to where it is, but that's -- I don't want</p> <p>11:16:22 14 to guess, so I don't know.</p> <p>11:16:23 15 BY MR. LOCKERBY:</p> <p>11:16:27 16 Q. But, in fact, you have a number of other</p> <p>11:16:29 17 documents like this in your possession; correct?</p> <p>11:16:33 18 A. It depends on what you mean by "like this." So</p> <p>11:16:36 19 I have a number of different election records, but they</p> <p>11:16:39 20 reflect different things.</p> <p>11:16:57 21 Q. Have you ever written any articles about the</p> <p>11:16:59 22 extent to which records like the one that's been marked</p> <p>11:17:04 23 as Exhibit 16 reflect noncitizen voting in California or</p> <p>11:17:09 24 any other jurisdiction?</p> <p>11:17:11 25 MR. LEBOWITZ: Objection. Vague. Compound.</p>
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<p>11:13:36 1 and you, the documents were not numbered; and they were</p> <p>11:13:40 2 all PDFs; and so we've applied numbers to them.</p> <p>11:13:45 3 Although, apparently, it's possible only to apply one</p> <p>11:13:48 4 number to a PDF; so there's some fairly lengthy PDFs</p> <p>11:13:53 5 with only one number. But I'll identify them for the</p> <p>11:13:57 6 record, and then I'll have a paralegal circulate a</p> <p>11:14:01 7 numbered set so everybody has those so it would be</p> <p>11:14:03 8 somewhat easier to work with.</p> <p>11:14:03 9 BY MR. LOCKERBY:</p> <p>11:14:05 10 Q. But in any event, the prefix that says</p> <p>11:14:12 11 F-L-I-P-R-O-D and then L-E-V-L-O-Y followed by numbers</p> <p>11:14:17 12 indicates that this was among the documents that you</p> <p>11:14:19 13 produced.</p> <p>11:14:20 14 Now, this particular one is from June 19, 2013,</p> <p>11:14:28 15 County of San Diego registrar of voters. And do you see</p> <p>11:14:34 16 that this correspondence refers to cancelation of an</p> <p>11:14:38 17 individual's voter registration in San Diego County?</p> <p>11:14:43 18 A. It -- it appears to, yes.</p> <p>11:14:46 19 Q. And according to this correspondence, the</p> <p>11:14:54 20 individual registered to vote in 1998 but was not a</p> <p>11:15:01 21 citizen and had his voter registration canceled on June</p> <p>11:15:10 22 19, 2013, on the basis of noncitizenship.</p> <p>11:15:13 23 Do you see that?</p> <p>11:15:13 24 A. I see that's what this is, yes.</p> <p>11:15:15 25 Q. And you see it also states that this individual</p>	<p>11:17:14 1 MR. BRIDGES: Join.</p> <p>11:17:18 2 THE WITNESS: I have written pieces, including</p> <p>11:17:20 3 information about some noncitizen voting, including in</p> <p>11:17:24 4 California. I don't -- I would have to look at my</p> <p>11:17:30 5 publications to see whether I've referenced particular</p> <p>11:17:32 6 records like this one.</p> <p>11:17:34 7 BY MR. LOCKERBY:</p> <p>11:17:35 8 Q. Do you contend that noncitizen voting is a</p> <p>11:17:37 9 myth?</p> <p>11:17:40 10 A. The fact that -- I contend it exists. It is --</p> <p>11:17:50 11 allegations of noncitizen voting are often exaggerated.</p> <p>11:17:54 12 And so the extent of claimed noncitizen voting may well</p> <p>11:17:59 13 be. I don't contend that noncitizen voting itself is a</p> <p>11:18:03 14 myth.</p> <p>11:18:04 15 Q. If a member of the general public wanted to get</p> <p>11:18:08 16 a copy of the document that's been marked as Exhibit 16,</p> <p>11:18:13 17 how would he or she go about doing that?</p> <p>11:18:16 18 MR. BRIDGES: Objection. Calls for</p> <p>11:18:18 19 speculation.</p> <p>11:18:23 20 THE WITNESS: Yeah. I don't know. It may be</p> <p>11:18:34 21 that this is a public record under California law; and</p> <p>11:18:39 22 it may be that it would be available for FOIA or the</p> <p>11:18:47 23 state equivalent; but without knowing more, I'm not</p> <p>11:19:04 24 sure.</p> <p>11:19:05 25 There are also provisions under federal law for</p>

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<p>11:19:11 1 collecting registration records or records relating to</p> <p>11:19:15 2 registration; and so a member of the public, depending</p> <p>11:19:19 3 on when they were seeking information like this, might</p> <p>11:19:23 4 turn to that federal law.</p> <p>11:19:25 5 BY MR. LOCKERBY:</p> <p>11:19:32 6 Q. And the federal law would apply to this</p> <p>11:19:36 7 particular document because the correspondence was sent</p> <p>11:19:40 8 to U.S. Citizenship and Immigration Services; is that</p> <p>11:19:40 9 right?</p> <p>11:19:45 10 A. No, that is not correct.</p> <p>11:19:52 11 Q. How would someone go about obtaining a document</p> <p>11:19:55 12 like the one that's been marked Exhibit 16 under federal</p> <p>11:19:59 13 law?</p> <p>11:19:59 14 MR. LEBOWITZ: Objection. Calls for</p> <p>11:20:00 15 speculation.</p> <p>11:20:03 16 MR. BRIDGES: Join.</p> <p>11:20:03 17 THE WITNESS: The National Voter Registration</p> <p>11:20:06 18 Act provides for public access to records relating to</p> <p>11:20:10 19 registration for a certain time period. I don't know</p> <p>11:20:18 20 whether a member of the public would have to request the</p> <p>11:20:21 21 documents within that time period in order to gain</p> <p>11:20:24 22 access.</p> <p>11:20:30 23 BY MR. LOCKERBY:</p> <p>11:20:30 24 Q. And is that a request that would have to be</p> <p>11:20:35 25 made to state officials, federal officials, either, or</p>	<p>11:35:31 1 time and go through them.</p> <p>11:35:32 2 So, first of all, this will be Exhibit 17.</p> <p>11:35:32 3 (Whereupon the document referred to is marked</p> <p>11:35:32 4 by the reporter as Defense Exhibit 17 for</p> <p>11:35:51 5 identification.)</p> <p>11:35:51 6 THE WITNESS: Thank you.</p> <p>11:36:01 7 MR. LOCKERBY: This one will be Exhibit 18.</p> <p>11:36:01 8 (Whereupon the document referred to is marked</p> <p>11:36:01 9 by the reporter as Defense Exhibit 18 for</p> <p>11:36:18 10 identification.)</p> <p>11:36:18 11 THE WITNESS: Thank you.</p> <p>11:36:19 12 MR. LOCKERBY: This one will be Exhibit 19.</p> <p>11:36:19 13 (Whereupon the document referred to is marked</p> <p>11:36:19 14 by the reporter as Defense Exhibit 19 for</p> <p>11:36:35 15 identification.)</p> <p>11:36:35 16 MR. BRIDGES: It's two pages?</p> <p>11:36:37 17 MR. LOCKERBY: Should be.</p> <p>11:36:42 18 This one will be Exhibit 20.</p> <p>11:37:02 19 This one will be Exhibit 21.</p> <p>11:37:02 20 (Whereupon the documents referred to are marked</p> <p>11:37:02 21 by the reporter as Defense Exhibits 20 and 21 for</p> <p>11:37:18 22 identification.)</p> <p>11:37:18 23 THE WITNESS: Thank you.</p> <p>11:37:21 24 MR. LOCKERBY: This one will be Exhibit 22.</p> <p>11:37:21 25 ///</p>
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<p>11:20:41 1 both?</p> <p>11:20:42 2 MR. BRIDGES: Objection. Lacks foundation.</p> <p>11:20:43 3 Calls for speculation.</p> <p>11:20:50 4 THE WITNESS: I would have to consult the law</p> <p>11:20:51 5 again. I -- I am sure that that request could be made</p> <p>11:20:56 6 of -- if timely, state officials or county officials.</p> <p>11:21:02 7 I'm unsure about whether it could also be made to</p> <p>11:21:05 8 federal officials.</p> <p>11:21:15 9 MR. LOCKERBY: Why don't we take a quick break,</p> <p>11:21:18 10 if this is a good time. I have a series of exhibits</p> <p>11:21:20 11 that won't take long to go through, but it might be</p> <p>11:21:23 12 better if I have them all arranged at once.</p> <p>11:21:25 13 So how much time do people need? Five minutes</p> <p>11:21:29 14 or...</p> <p>11:21:29 15 THE WITNESS: A quick restroom break would</p> <p>11:21:32 16 be --</p> <p>11:21:32 17 MR. BRIDGES: Five minutes is great.</p> <p>11:21:34 18 THE VIDEOGRAPHER: We're off the record at</p> <p>11:21:36 19 11:21 a.m.</p> <p>11:21:38 20 (A recess is taken.)</p> <p>11:35:11 21 THE VIDEOGRAPHER: We are back on the record at</p> <p>11:35:17 22 11:35 a.m.</p> <p>11:35:20 23 MR. LOCKERBY: Okay. I have a series of</p> <p>11:35:23 24 documents I'm going to mark. I'm going to ask you some</p> <p>11:35:27 25 questions about all of them at once just to try and save</p>	<p>11:37:21 1 (Whereupon the document referred to is marked</p> <p>11:37:21 2 by the reporter as Defense Exhibit 22 for</p> <p>11:37:35 3 identification.)</p> <p>11:37:35 4 THE WITNESS: Thank you.</p> <p>11:37:37 5 MR. LOCKERBY: This one will be Exhibit 23.</p> <p>11:37:37 6 (Whereupon the document referred to is marked</p> <p>11:37:37 7 by the reporter as Defense Exhibit 23 for</p> <p>11:37:55 8 identification.)</p> <p>11:37:55 9 THE WITNESS: Thank you.</p> <p>11:37:56 10 MR. LOCKERBY: And this one will be Exhibit 24.</p> <p>11:37:56 11 (Whereupon the document referred to is marked</p> <p>11:37:56 12 by the reporter as Defense Exhibit 24 for</p> <p>11:38:14 13 identification.)</p> <p>11:38:14 14 THE WITNESS: Thank you.</p> <p>11:38:29 15 BY MR. LOCKERBY:</p> <p>11:38:33 16 Q. All right. You've been handed what's been</p> <p>11:38:34 17 marked -- or what have been marked as Exhibits 17, 18,</p> <p>11:38:42 18 19, 20, 21, 22, 23, and 24 to your deposition; and these</p> <p>11:38:54 19 are all among documents that you produced in response to</p> <p>11:38:59 20 the subpoena.</p> <p>11:39:03 21 The first one, Exhibit 17, is also from the</p> <p>11:39:08 22 San Diego County Registrar of Voters dated March 6,</p> <p>11:39:17 23 2014.</p> <p>11:39:17 24 Exhibit 18 is from the San Diego County</p> <p>11:39:21 25 Registrar of Voters dated November 10, 2014.</p>

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<p>11:39:27 1 Exhibit 19 says on the first page, "Use this</p> <p>11:39:38 2 form only for canceling registration in San Diego</p> <p>11:39:44 3 County." And you see it has the name of a voter across</p> <p>11:39:46 4 the top?</p> <p>11:39:48 5 A. Yes.</p> <p>11:39:49 6 Q. And it says the voter's place of birth is</p> <p>11:39:55 7 Tijuana?</p> <p>11:39:56 8 A. Yes.</p> <p>11:39:56 9 Q. And then the individual says, "I hereby</p> <p>11:39:59 10 authorize the registrar of voters to cancel this</p> <p>11:40:02 11 registration for the following reason: Noncitizen."</p> <p>11:40:09 12 Do you see that?</p> <p>11:40:10 13 A. Yes.</p> <p>11:40:10 14 Q. In your experience, is there a reason that</p> <p>11:40:13 15 someone might want to cancel his or her own voter</p> <p>11:40:17 16 registration for being a noncitizen?</p> <p>11:40:18 17 A. Yes.</p> <p>11:40:19 18 MR. BRIDGES: Objection. Calls for</p> <p>11:40:20 19 speculation.</p> <p>11:40:21 20 You may answer.</p> <p>11:40:22 21 THE WITNESS: Yes.</p> <p>11:40:22 22 BY MR. LOCKERBY:</p> <p>11:40:23 23 Q. What reason would that be?</p> <p>11:40:24 24 MR. BRIDGES: Same objection.</p> <p>11:40:26 25 You may answer.</p>	<p>11:42:06 1 Q. In your experience, are there circumstances in</p> <p>11:42:09 2 which an individual indicates at the time that he or she</p> <p>11:42:14 3 registers to vote that he or she is a citizen, is</p> <p>11:42:17 4 registered, but then later seeks cancelation based on</p> <p>11:42:23 5 noncitizenship?</p> <p>11:42:24 6 A. I have seen examples of that, yes.</p> <p>11:42:27 7 Q. And in your experience, are there certain</p> <p>11:42:29 8 circumstances in which an individual, having previously</p> <p>11:42:34 9 registered to vote by claiming to be a citizen, would</p> <p>11:42:37 10 then want to correct the record and state that he or she</p> <p>11:42:42 11 is not a citizen?</p> <p>11:42:43 12 A. Yes.</p> <p>11:42:43 13 Q. Why would that be?</p> <p>11:42:45 14 MR. LEBOWITZ: Objection.</p> <p>11:42:46 15 MR. BRIDGES: Objection. Calls for -- join.</p> <p>11:42:48 16 THE WITNESS: So there may be several different</p> <p>11:42:51 17 reasons. Among them, again, the individual mistake. An</p> <p>11:42:55 18 individual may have indicated incorrectly that they were</p> <p>11:42:58 19 a citizen when, in fact, they were not or may have</p> <p>11:43:01 20 misunderstood the instructions on the registration form</p> <p>11:43:04 21 and then later come to realize that they filled out the</p> <p>11:43:08 22 form improperly.</p> <p>11:43:10 23 BY MR. LOCKERBY:</p> <p>11:43:10 24 Q. Have you ever seen situations in which someone</p> <p>11:43:14 25 who was registering people to vote provided inaccurate</p>
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<p>11:40:27 1 THE WITNESS: There may be several. Among</p> <p>11:40:30 2 them, looking only at this Exhibit 19 before me, Mr. or</p> <p>11:40:40 3 Ms. Rodriguez -- I'm not sure -- appears to have been</p> <p>11:40:48 4 registered by mistake, declared him or herself not to be</p> <p>11:40:52 5 a citizen on the registration form, and was nevertheless</p> <p>11:40:55 6 registered. And so a citizen -- a individual, a</p> <p>11:41:00 7 noncitizen seen that they had been registered by</p> <p>11:41:04 8 official mistake, they seek cancelation of their record.</p> <p>11:41:09 9 BY MR. LOCKERBY:</p> <p>11:41:09 10 Q. How can you tell by this form that the</p> <p>11:41:12 11 individual was registered by mistake?</p> <p>11:41:14 12 A. On the second page of Exhibit 19 -- it's a</p> <p>11:41:19 13 little bit difficult to read on the facsimile copy here;</p> <p>11:41:22 14 but above Question 12, over on the bottom right-hand</p> <p>11:41:27 15 side of the page, there is a question asking, "Are you a</p> <p>11:41:33 16 citizen of the United States of America," question mark.</p> <p>11:41:35 17 There are two bubbles next to that: One for yes, one</p> <p>11:41:38 18 for no.</p> <p>11:41:39 19 I can't authenticate this document, but the</p> <p>11:41:42 20 bubble next to "no" is colored in. And according to</p> <p>11:41:48 21 procedure in every jurisdiction of which I'm aware, a</p> <p>11:41:53 22 form should not have been processed. That's not</p> <p>11:41:56 23 accurate. A form should have been processed, but</p> <p>11:42:00 24 individual should not have been registered if they</p> <p>11:42:02 25 indicated that they were not a citizen.</p>	<p>11:43:20 1 information that's provide -- that has prompted a</p> <p>11:43:23 2 noncitizen to register?</p> <p>11:43:32 3 A. Yes.</p> <p>11:43:33 4 Q. And in your experience, if a --</p> <p>11:43:38 5 A. I should -- pardon me. I should clarify.</p> <p>11:43:41 6 I have not personally -- you asked whether I</p> <p>11:43:43 7 had seen. I have not personally seen that happen. I am</p> <p>11:43:47 8 aware of circumstances in which that has happened.</p> <p>11:43:49 9 Q. Okay. And are you aware of circumstances in</p> <p>11:43:52 10 which a noncitizen decides to seek citizenship and</p> <p>11:44:03 11 encounters difficulties because the person has</p> <p>11:44:06 12 previously voted even though not being entitled to do</p> <p>11:44:09 13 so?</p> <p>11:44:10 14 A. Yes.</p> <p>11:44:10 15 Q. And under those circumstances, would it make</p> <p>11:44:12 16 sense for a noncitizen to notify voter registration</p> <p>11:44:19 17 officials so that hopefully the application for</p> <p>11:44:23 18 citizenship will be successful?</p> <p>11:44:26 19 MR. LEBOWITZ: Objection. Calls for</p> <p>11:44:27 20 speculation.</p> <p>11:44:28 21 MR. BRIDGES: Join.</p> <p>11:44:30 22 THE WITNESS: Would that make sense? Yes.</p> <p>11:44:34 23 BY MR. LOCKERBY:</p> <p>11:44:34 24 Q. And are you aware of circumstances in which</p> <p>11:44:37 25 that's happened?</p>

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<p>11:44:39 1 A. I -- I don't know that I'm aware with</p> <p>11:44:46 2 sufficient detail to say that that's why somebody might</p> <p>11:44:51 3 have made that particular request.</p> <p>11:44:51 4 Q. Have you heard that that's happened?</p> <p>11:44:57 5 A. Probably. I honestly can't say, you know,</p> <p>11:45:02 6 without pointing to a particular article where</p> <p>11:45:04 7 somebody's made that claim. But that -- that would not</p> <p>11:45:06 8 surprise me.</p> <p>11:45:06 9 Q. And you don't have any basis for disputing that</p> <p>11:45:09 10 that's happened?</p> <p>11:45:09 11 A. I do not.</p> <p>11:45:21 12 Q. I'd like you to look, please, at what's been</p> <p>11:45:24 13 marked as Exhibit 20. Do you see this says it's a --</p> <p>11:45:37 14 it's from the DeKalb County, Georgia, Board of</p> <p>11:45:43 15 Registration and Elections?</p> <p>11:45:44 16 A. Yes.</p> <p>11:45:44 17 Q. And it says, "Dear Mr. Currier, According to</p> <p>11:45:48 18 information you furnished on the jury questionnaire from</p> <p>11:45:51 19 DeKalb Superior Court, you are not a U.S. citizen. You</p> <p>11:45:55 20 must be a U.S. citizen to be eligible to register and</p> <p>11:45:59 21 vote."</p> <p>11:45:59 22 In your experience, does it sometimes come to</p> <p>11:46:02 23 light that registered voters, in fact, are not U.S.</p> <p>11:46:07 24 citizens when they are summoned for jury duty?</p> <p>11:46:11 25 MR. BRIDGES: Objection. Calls for -- well, as</p>	<p>11:47:36 1 who's summoned for jury duty states that he or she is</p> <p>11:47:41 2 not a U.S. citizen?</p> <p>11:47:42 3 A. Yes.</p> <p>11:47:44 4 Q. Do you know whether that happens in the</p> <p>11:47:48 5 Commonwealth of Virginia?</p> <p>11:47:50 6 A. I don't know.</p> <p>11:47:51 7 Q. Do you believe that that's something that state</p> <p>11:47:58 8 courts should do? Notify registrars when someone is</p> <p>11:48:02 9 excused from jury duty on the basis of not being a U.S.</p> <p>11:48:08 10 citizen?</p> <p>11:48:08 11 A. I do.</p> <p>11:48:08 12 Q. Why?</p> <p>11:48:10 13 A. It should prompt further investigation about</p> <p>11:48:13 14 whether that individual is actually a noncitizen or not;</p> <p>11:48:17 15 and if that individual is actually a noncitizen, it</p> <p>11:48:20 16 should result in, at the least, removal from the voter</p> <p>11:48:24 17 rolls.</p> <p>11:48:24 18 Q. If someone has stated under oath that he or she</p> <p>11:48:31 19 is not a citizen of the United States, what further</p> <p>11:48:33 20 investigation, in your view, would be required?</p> <p>11:48:41 21 A. I would think that a registrar would want to</p> <p>11:48:44 22 confirm that the individual is now currently not a</p> <p>11:48:49 23 citizen; that is, there may be an investigation to</p> <p>11:48:55 24 whether status has changed at the time. And there may</p> <p>11:48:58 25 also be an investigation as to whether the individual</p>
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<p>11:46:14 1 phrased, I think it calls for speculation.</p> <p>11:46:16 2 But you may answer.</p> <p>11:46:17 3 THE WITNESS: Yeah. It sometimes comes to</p> <p>11:46:19 4 light that individuals have indicated in response to</p> <p>11:46:22 5 jury service summons that they are noncitizens. I</p> <p>11:46:26 6 confess that I don't know whether that is true.</p> <p>11:46:32 7 BY MR. LOCKERBY:</p> <p>11:46:34 8 Q. So you're saying you don't know whether the</p> <p>11:46:38 9 citizen's statement in response to jury summons that he</p> <p>11:46:42 10 or she is not a U.S. citizen is true? You simply know</p> <p>11:46:45 11 that some individual summoned for jury duty then state</p> <p>11:46:50 12 that they're not U.S. citizens?</p> <p>11:46:52 13 A. Correct.</p> <p>11:46:53 14 I -- I do want to clarify. I don't know that</p> <p>11:46:56 15 that's what happened in Exhibit 20. There is an</p> <p>11:47:00 16 indication on Page 3 that the voter was sent a letter to</p> <p>11:47:02 17 verify their citizenship and never responded. I don't</p> <p>11:47:07 18 know whether the individual in Exhibit 20 affirmatively</p> <p>11:47:12 19 indicated that they were not a citizen.</p> <p>11:47:14 20 Q. And on the second page of the exhibit, you</p> <p>11:47:17 21 don't know who wrote, "He is a citizen of Australia, not</p> <p>11:47:22 22 the U.S."?</p> <p>11:47:23 23 A. Correct.</p> <p>11:47:27 24 Q. Are you aware of the fact that in some states,</p> <p>11:47:31 25 the state courts notify local registrars when someone</p>	<p>11:49:00 1 lied when they said they were not a citizen or were</p> <p>11:49:02 2 otherwise mistaken when they said they were not a</p> <p>11:49:05 3 citizen.</p> <p>11:49:05 4 Q. And how would a registrar be able to verify</p> <p>11:49:08 5 whether somebody is, in fact, a U.S. citizen?</p> <p>11:49:12 6 MR. BRIDGES: Objection. Calls for</p> <p>11:49:13 7 speculation.</p> <p>11:49:15 8 THE WITNESS: There are several potential</p> <p>11:49:17 9 avenues. I don't know all of the steps that registrar</p> <p>11:49:20 10 would, might, or should take. One potential avenue is</p> <p>11:49:25 11 to contact the individual themselves.</p> <p>11:49:33 12 BY MR. LOCKERBY:</p> <p>11:49:34 13 Q. Besides contacting the individual, what else</p> <p>11:49:36 14 could a registrar do to try to investigate and verify</p> <p>11:49:41 15 whether an individual is, in fact, not a U.S. citizen?</p> <p>11:49:45 16 MR. BRIDGES: Objection. Calls for</p> <p>11:49:46 17 speculation.</p> <p>11:49:47 18 MR. LEBOWITZ: Join.</p> <p>11:49:50 19 THE WITNESS: I don't know -- it depends on the</p> <p>11:49:53 20 jurisdiction -- whether the registrar has access to, for</p> <p>11:49:58 21 example, motor vehicle or other public records. There</p> <p>11:50:00 22 are some states in which records track whether</p> <p>11:50:03 23 individuals presented proof of citizenship upon</p> <p>11:50:07 24 application for various benefits, including driver's</p> <p>11:50:11 25 licenses or the like. A registrar with access to that</p>

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<p>11:50:16 1 information could determine whether information</p> <p>11:50:22 2 revealing the person to be a citizen was provided in</p> <p>11:50:25 3 some other government benefit database. That's going to</p> <p>11:50:32 4 vary based on whether the individuals that -- the</p> <p>11:50:36 5 government officials have access to that sort of</p> <p>11:50:39 6 information.</p> <p>11:50:39 7 BY MR. LOCKERBY:</p> <p>11:50:40 8 Q. So in the case of motor vehicle records, in</p> <p>11:50:43 9 many states someone can obtain a driver's license</p> <p>11:50:46 10 without being a U.S. citizen; correct?</p> <p>11:50:48 11 A. Correct.</p> <p>11:50:48 12 Q. And the forms of identification required for a</p> <p>11:50:53 13 noncitizen to obtain a driver's license could include,</p> <p>11:50:56 14 you know, for example, what's referred to as a green</p> <p>11:51:00 15 card?</p> <p>11:51:00 16 A. In some states, that's correct.</p> <p>11:51:02 17 Q. So if someone has a green card, then that</p> <p>11:51:06 18 individual is, by definition, not a U.S. citizen?</p> <p>11:51:12 19 A. Incorrect. That individual at the time they</p> <p>11:51:14 20 presented their green card was not a citizen.</p> <p>11:51:17 21 Q. Yeah. And if the individual registered to vote</p> <p>11:51:26 22 without being a U.S. citizen, if a state official had</p> <p>11:51:31 23 access to the identification provided to the Department</p> <p>11:51:36 24 of Motor Vehicles, a registrar could verify that;</p> <p>11:51:36 25 correct?</p>	<p>11:53:05 1 BY MR. LOCKERBY:</p> <p>11:53:06 2 Q. Okay. Let me ask it a different way.</p> <p>11:53:07 3 In your experience, does someone have to be a</p> <p>11:53:11 4 citizen of the United States in order to receive certain</p> <p>11:53:15 5 government benefits? Housing assistance, food</p> <p>11:53:18 6 assistance, that sort of thing.</p> <p>11:53:21 7 A. It depends on the benefit.</p> <p>11:53:22 8 Q. There are some benefits for which an individual</p> <p>11:53:25 9 does not have to be a U.S. citizen; correct?</p> <p>11:53:27 10 A. I believe that's correct.</p> <p>11:53:29 11 Q. And if a noncitizen is receiving such benefits,</p> <p>11:53:31 12 the agency responsible for the benefits should have</p> <p>11:53:37 13 information about whether the individual is a citizen;</p> <p>11:53:41 14 correct?</p> <p>11:53:41 15 MR. BRIDGES: Calls for speculation.</p> <p>11:53:43 16 Objection.</p> <p>11:53:46 17 THE WITNESS: Yeah. That -- that depends --</p> <p>11:53:47 18 that's incorrect as a blanket statement. It depends on</p> <p>11:53:50 19 what information is collected at the time the individual</p> <p>11:53:54 20 applied for benefits and what obligations there are to</p> <p>11:53:57 21 update that information to reflect the continuing</p> <p>11:53:59 22 adjustment of immigration status.</p> <p>11:54:03 23 BY MR. LOCKERBY:</p> <p>11:54:03 24 Q. And not every state registrar has access to the</p> <p>11:54:07 25 type of benefit information that you just described; is</p>
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<p>11:51:45 1 A. A registrar could verify what? I'm not sure I</p> <p>11:51:48 2 know how --</p> <p>11:51:48 3 Q. Could verify whether the individual registered</p> <p>11:51:51 4 to vote without being a U.S. citizen.</p> <p>11:51:56 5 A. It would depend on the timing. Maybe it's</p> <p>11:52:01 6 possible that given the timing of both the motor vehicle</p> <p>11:52:04 7 record and the registration, that a registrar might have</p> <p>11:52:08 8 been able to determine that at the time the registration</p> <p>11:52:10 9 was submitted, an individual was likely not a U.S.</p> <p>11:52:14 10 citizen.</p> <p>11:52:14 11 I don't know that it would be possible if there</p> <p>11:52:20 12 is a time gap for the registrar to prove that the</p> <p>11:52:25 13 individual was not a citizen by referring to an older</p> <p>11:52:28 14 motor vehicle record.</p> <p>11:52:29 15 Q. And in your experience, not every state</p> <p>11:52:35 16 provides registrars with access to the type of motor</p> <p>11:52:39 17 vehicle records that we've been discussing?</p> <p>11:52:41 18 A. Correct.</p> <p>11:52:42 19 Q. And similarly, in your experience, not every</p> <p>11:52:46 20 state provides registrars with access to information</p> <p>11:52:49 21 about whether noncitizens are receiving benefits?</p> <p>11:52:59 22 MR. BRIDGES: Objection. Vague and ambiguous.</p> <p>11:53:01 23 THE WITNESS: I think -- yeah. I think that's</p> <p>11:53:04 24 correct. But could you clarify the question.</p> <p>11:53:05 25 ///</p>	<p>11:54:07 1 that right?</p> <p>11:54:10 2 A. Correct.</p> <p>11:54:10 3 Q. There is also a database maintained by the</p> <p>11:54:14 4 Department of Homeland Security known as SAVE.</p> <p>11:54:19 5 Are you familiar with that?</p> <p>11:54:20 6 A. I am.</p> <p>11:54:20 7 Q. And not every state participates in the SAVE</p> <p>11:54:24 8 program or uses data available through the SAVE program</p> <p>11:54:29 9 to verify citizenship of registered voters; is that</p> <p>11:54:29 10 right?</p> <p>11:54:32 11 A. That's correct.</p> <p>11:54:32 12 Q. Are you familiar with any states that are using</p> <p>11:54:39 13 it?</p> <p>11:54:42 14 A. I believe that the Department of Homeland</p> <p>11:54:45 15 Security has indicated that the SAVE database is</p> <p>11:54:50 16 unsuitable for verifying the current citizenship of</p> <p>11:54:53 17 individuals in the system. And so I'm not aware of any</p> <p>11:54:57 18 state that currently uses that system on a regular</p> <p>11:55:02 19 basis. There may be individual law enforcement</p> <p>11:55:05 20 proceedings that access that database for disposing of</p> <p>11:55:11 21 certain individual cases, but I'm not -- I'm not aware</p> <p>11:55:15 22 of a state that more broadly uses that database for that</p> <p>11:55:18 23 purpose, no.</p> <p>11:55:18 24 Q. So you weren't aware that Colorado, Texas,</p> <p>11:55:21 25 Florida, and Kansas were using the database to verify</p>

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<p>11:55:26 1 whether noncitizens are registered to vote?</p> <p>11:55:30 2 A. I am not.</p> <p>11:55:32 3 Q. And you weren't aware -- or are you aware of</p> <p>11:55:38 4 the fact that the information accessible through the</p> <p>11:55:45 5 SAVE program is information that, for example, a state</p> <p>11:55:50 6 Department of Motor Vehicles would have, like an alien</p> <p>11:55:53 7 number?</p> <p>11:55:53 8 A. It depends on the motor vehicle laws in any</p> <p>11:55:56 9 particular state.</p> <p>11:55:58 10 Q. But --</p> <p>11:55:59 11 A. I -- across the board, I don't know that all</p> <p>11:56:02 12 states require an alien number, for example.</p> <p>11:56:10 13 Q. But you do know that every state requires some</p> <p>11:56:14 14 form of documentation for a noncitizen to get a driver's</p> <p>11:56:20 15 license?</p> <p>11:56:21 16 MR. BRIDGES: Objection. Vague and ambiguous.</p> <p>11:56:23 17 THE WITNESS: Every state requires some form of</p> <p>11:56:25 18 documentation to get a driver's license, including</p> <p>11:56:30 19 noncitizens, yes.</p> <p>11:56:31 20 BY MR. LOCKERBY:</p> <p>11:56:32 21 Q. And do you know whether the documentation that</p> <p>11:56:38 22 a state -- or that states require to get a driver's</p> <p>11:56:41 23 license contains information that is recorded in the</p> <p>11:56:45 24 SAVE database?</p> <p>11:56:46 25 MR. LEBOWITZ: Objection.</p>	<p>11:59:23 1 A. Correct.</p> <p>11:59:23 2 Q. -- versus United States Election Assistance</p> <p>11:59:27 3 Commission.</p> <p>11:59:29 4 Have you read this brief before?</p> <p>11:59:30 5 A. Perhaps.</p> <p>11:59:35 6 Q. But at least you had it in your files?</p> <p>11:59:37 7 A. I have it. I -- I wish that I had read</p> <p>11:59:40 8 everything in my files. I have not. I don't recall</p> <p>11:59:43 9 whether I've read this particular brief before.</p> <p>11:59:46 10 Q. And do you see that this brief says it was</p> <p>11:59:52 11 submitted on behalf of the American Civil Rights Union?</p> <p>11:59:57 12 A. Yes.</p> <p>11:59:57 13 Q. And counsel for the American Civil Rights Union</p> <p>12:00:02 14 was the Public Interest Legal Foundation --</p> <p>12:00:04 15 A. Yes.</p> <p>12:00:04 16 Q. -- one of the defendants in that case.</p> <p>12:00:08 17 Do you see that?</p> <p>12:00:11 18 A. I -- I know that the Public Interest Legal</p> <p>12:00:14 19 Foundation was counsel. I'm -- I'm not aware that they</p> <p>12:00:17 20 were defendants in the case.</p> <p>12:00:18 21 Q. Defendants in this case.</p> <p>12:00:19 22 A. Yes.</p> <p>12:00:20 23 Q. In the case in which you're testifying. You</p> <p>12:00:22 24 are aware of that?</p> <p>12:00:23 25 A. Yes.</p>
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<p>11:56:48 1 THE WITNESS: Sometimes, yes. Other times, no.</p> <p>11:56:55 2 BY MR. LOCKERBY:</p> <p>11:56:58 3 Q. I'd like you to look, please, at Exhibits 21,</p> <p>11:57:05 4 22, 23, and 24, all of which you've produced; and all of</p> <p>11:57:18 5 these reflect the cancelation of voter registrations in</p> <p>11:57:23 6 California based on noncitizenship; correct?</p> <p>11:57:33 7 A. I'd like a moment to take a look at them.</p> <p>11:58:00 8 These appear to be cancelations of voter</p> <p>11:58:03 9 registration or indications that registration will be</p> <p>11:58:06 10 canceled on the basis of noncitizenship, yes.</p> <p>11:58:33 11 MR. LOCKERBY: I'd like to have this marked as</p> <p>11:58:35 12 Exhibit 25, please.</p> <p>11:58:35 13 (Whereupon the document referred to is marked</p> <p>11:58:35 14 by the reporter as Defense Exhibit 25 for</p> <p>11:58:53 15 identification.)</p> <p>11:58:53 16 THE WITNESS: Thank you.</p> <p>11:58:58 17 MR. GORMAN: What exhibit number is this?</p> <p>11:59:00 18 Sorry. Twenty-five?</p> <p>11:59:02 19 MR. LOCKERBY: Should be 25.</p> <p>11:59:04 20 MR. GORMAN: Yeah.</p> <p>11:59:07 21 BY MR. LOCKERBY:</p> <p>11:59:07 22 Q. Exhibit 25 is among the documents that you</p> <p>11:59:10 23 produced, and we've numbered it 174. It's an amicus</p> <p>11:59:17 24 brief submitted to the Supreme Court in the case of</p> <p>11:59:22 25 Kobach -- is that how you pronounce his name?</p>	<p>12:00:24 1 Q. And if you look at Page 1 of the brief, under</p> <p>12:00:31 2 "Interests of Amicus," it lists the members of the</p> <p>12:00:42 3 American Civil Rights Union's board.</p> <p>12:00:45 4 Do you see that?</p> <p>12:00:45 5 A. I do.</p> <p>12:00:46 6 Q. And one of them is Former Ohio Secretary of</p> <p>12:00:53 7 State J. Kenneth Blackwell.</p> <p>12:00:55 8 Are you familiar with Mr. Blackwell?</p> <p>12:00:56 9 A. I am.</p> <p>12:00:57 10 Q. How are you familiar with him?</p> <p>12:00:58 11 A. He was the Secretary of State, I believe, in</p> <p>12:01:03 12 the period including 2004 in Ohio. I'm familiar with</p> <p>12:01:11 13 many but not all of the Secretaries of State in many of</p> <p>12:01:15 14 the states.</p> <p>12:01:16 15 Q. Are you aware that he has been retained as an</p> <p>12:01:19 16 expert by defendants in this case?</p> <p>12:01:21 17 A. I was not.</p> <p>12:01:22 18 Q. And also, at the bottom of Page 1, top of</p> <p>12:01:29 19 Page 2, it identifies Mr. Adams and Mr. von Spakovsky as</p> <p>12:01:38 20 members of the board of ACRU. Do you see that?</p> <p>12:01:41 21 A. I do.</p> <p>12:01:49 22 Q. When this was filed in the U.S. Supreme Court,</p> <p>12:01:53 23 had you come on board at the justice department at that</p> <p>12:01:57 24 time?</p> <p>12:01:57 25 A. No.</p>

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<p>12:01:57 1 Q. So this -- forgive me. I think you probably</p> <p>12:02:02 2 answered this before. But when exactly did you start?</p> <p>12:02:05 3 A. It would have been either late August or early</p> <p>12:02:08 4 September of 2015. I can't recall the exact date.</p> <p>12:02:11 5 Q. On the top of page -- or on Page 10, there is a</p> <p>12:02:31 6 heading that says, "The Federal Forum Has Failed to</p> <p>12:02:36 7 Prevent Noncitizens from Registering to Vote and Casting</p> <p>12:02:41 8 Ballots."</p> <p>12:02:42 9 Do you see that?</p> <p>12:02:43 10 A. I do.</p> <p>12:02:43 11 Q. And then on the next page, there is a heading</p> <p>12:02:45 12 on Page 11 entitled "Noncitizens Are Registering and</p> <p>12:02:52 13 Voting." And you see one of the references on that page</p> <p>12:02:57 14 is records from Harris County, Texas?</p> <p>12:03:01 15 A. I -- I see that that's a reference, yes.</p> <p>12:03:03 16 Q. Yeah. And do you have any basis for disputing</p> <p>12:03:06 17 that reference?</p> <p>12:03:07 18 MR. BRIDGES: Objection. Vague and ambiguous.</p> <p>12:03:10 19 THE WITNESS: The fact that there is a</p> <p>12:03:11 20 reference in the brief? I -- I do not.</p> <p>12:03:12 21 BY MR. LOCKERBY:</p> <p>12:03:13 22 Q. Do you dispute the accuracy of the records</p> <p>12:03:17 23 referenced here? Do you have any basis for disputing</p> <p>12:03:19 24 that one way or the other?</p> <p>12:03:21 25 MR. BRIDGES: Objection. Vague and ambiguous.</p>	<p>12:05:05 1 states specifically to find noncitizens."</p> <p>12:05:10 2 Q. Do you agree that federal agencies have refused</p> <p>12:05:14 3 to cooperate with state election officials that have</p> <p>12:05:17 4 tried to verify the citizenship of registered voters?</p> <p>12:05:21 5 A. I do not know the various ways in which the</p> <p>12:05:28 6 unnamed state officials here have attempted to interact</p> <p>12:05:31 7 with federal agencies, and so I can't really opine one</p> <p>12:05:37 8 way or the other.</p> <p>12:05:37 9 Q. Further up on Page 14 there is a reference to a</p> <p>12:05:40 10 2005 report from the Government Accountability Office,</p> <p>12:05:44 11 which, according to this, found that up to 3 percent of</p> <p>12:05:51 12 the 30,000 individuals chosen for jury duty from voter</p> <p>12:05:54 13 registration rolls in just one U.S. district court over</p> <p>12:05:58 14 a 2-year period were not U.S. citizens.</p> <p>12:06:01 15 Are you familiar with the GAO report cited</p> <p>12:06:06 16 here?</p> <p>12:06:06 17 A. I'm generally familiar with that report, yes.</p> <p>12:06:08 18 Q. And that report is from 2005; right?</p> <p>12:06:11 19 A. That's correct.</p> <p>12:06:12 20 Q. Do you know whether that report has been</p> <p>12:06:14 21 updated at any time since 2005?</p> <p>12:06:25 22 A. I don't. I know that the GAO has done</p> <p>12:06:30 23 additional studies since 2005 on the maintenance of</p> <p>12:06:33 24 voter registration lists. I don't know whether those</p> <p>12:06:36 25 purport to be an update of this assessment or not.</p>
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<p>12:03:24 1 THE WITNESS: Yeah. I -- sitting here, I have</p> <p>12:03:27 2 no basis to know whether those records are accurate or</p> <p>12:03:30 3 not or what they purport to be.</p> <p>12:03:45 4 BY MR. LOCKERBY:</p> <p>12:03:46 5 Q. On Page 14 -- bottom of Page 14, top of</p> <p>12:03:51 6 Page 15, there is a quotation to -- quotation of and</p> <p>12:03:56 7 citation to testimony of Mr. von Spakovsky in which he</p> <p>12:04:02 8 states, "Obtaining an accurate assessment of the size of</p> <p>12:04:06 9 this problem is difficult. There is no systematic</p> <p>12:04:10 10 review of voter registration rolls by most states to</p> <p>12:04:14 11 find noncitizens. And the relevant federal agencies in</p> <p>12:04:18 12 direct violation of federal law have either refused to</p> <p>12:04:21 13 cooperate with those few state election officials who</p> <p>12:04:24 14 seek to verify the citizenship status of registered</p> <p>12:04:27 15 voters or put up burdensome red tape to make such</p> <p>12:04:31 16 verification difficult."</p> <p>12:04:35 17 Are there any statements by Mr. von Spakovsky</p> <p>12:04:39 18 in the passage I've just read you with which you agree?</p> <p>12:04:44 19 A. Yes.</p> <p>12:04:45 20 Q. Which ones?</p> <p>12:04:46 21 A. "Obtaining an accurate assessment of the size</p> <p>12:04:51 22 of this problem is difficult."</p> <p>12:04:52 23 Q. Any other statements?</p> <p>12:04:54 24 A. I believe that it is true that, "There is no</p> <p>12:05:01 25 systematic review of voter registration rolls by most</p>	<p>12:06:39 1 Q. And if someone wanted to determine how many</p> <p>12:06:42 2 individuals chosen for jury duty in federal courts were</p> <p>12:06:49 3 not seated as jurors based on noncitizenship status, how</p> <p>12:06:55 4 would a private citizen go about that?</p> <p>12:06:58 5 MR. BRIDGES: Objection. Calls for</p> <p>12:06:58 6 speculation.</p> <p>12:07:00 7 THE WITNESS: Yeah. I -- I don't know. I</p> <p>12:07:02 8 would have to speculate. I imagine that -- I'm not</p> <p>12:07:09 9 going to imagine that. I don't know.</p> <p>12:07:09 10 BY MR. LOCKERBY:</p> <p>12:07:11 11 Q. If you yourself wanted to do some research as</p> <p>12:07:22 12 to the number of jurors chosen for jury duty from voter</p> <p>12:07:25 13 registration rolls were not seated as jurors by federal</p> <p>12:07:30 14 courts based on being noncitizens, how would you go</p> <p>12:07:33 15 about that?</p> <p>12:07:34 16 MR. LEBOWITZ: Objection. Calls for</p> <p>12:07:35 17 speculation.</p> <p>12:07:35 18 THE WITNESS: I would -- I would -- if there</p> <p>12:07:40 19 were a particular district that I were interested in, I</p> <p>12:07:45 20 would write the -- begin by writing the administrative</p> <p>12:07:51 21 office of the courts for that district or the court</p> <p>12:07:53 22 clerk for that district to ask if that information were</p> <p>12:07:56 23 available. If that information were kept -- and I'm not</p> <p>12:08:04 24 sure if it is or it is not in the district in</p> <p>12:08:06 25 question -- I would then examine the public access</p>

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<p>12:08:13 1 freedom of information laws in the jurisdiction to</p> <p>12:08:16 2 determine whether that information was a public record</p> <p>12:08:19 3 to which I had the right of access.</p> <p>12:08:21 4 BY MR. LOCKERBY:</p> <p>12:08:22 5 Q. But sitting here today, you don't know whether</p> <p>12:08:24 6 it's even possible if you could get that information</p> <p>12:08:27 7 from any particular U.S. district court, much less the</p> <p>12:08:32 8 federal courts, in general?</p> <p>12:08:34 9 A. Correct.</p> <p>12:11:11 10 THE WITNESS: Bless you.</p> <p>12:11:14 11 MR. BRIDGES: Bless you.</p> <p>12:11:15 12 THE VIDEOGRAPHER: Thank you.</p> <p>12:11:19 13 MR. LOCKERBY: Let's see. What exhibit are we</p> <p>12:11:24 14 up to now?</p> <p>12:11:25 15 MR. BRIDGES: Twenty-five was the last one.</p> <p>12:11:26 16 MR. LOCKERBY: All right. I'd like to have</p> <p>12:11:28 17 this marked as 25, please.</p> <p>12:11:30 18 MR. LEBOWITZ: The last one --</p> <p>12:11:31 19 MR. BRIDGES: The last one was 25.</p> <p>12:11:32 20 MR. LOCKERBY: Twenty-five.</p> <p>12:11:33 21 Twenty-six.</p> <p>12:11:33 22 (Whereupon the document referred to is marked</p> <p>12:11:33 23 by the reporter as Defense Exhibit 26 for</p> <p>12:11:50 24 identification.)</p> <p>12:11:50 25 THE WITNESS: Thank you.</p>	<p>12:13:50 1 be interesting.</p> <p>12:13:52 2 Q. And was there anything about that case that you</p> <p>12:13:54 3 saw as having the potential to make new law?</p> <p>12:13:59 4 A. There is always the potential whenever a</p> <p>12:14:05 5 complaint is brought for a court to make new law on it.</p> <p>12:14:08 6 And so there was nothing particularly in the complaint</p> <p>12:14:14 7 that seemed extraordinary, but I could not anticipate</p> <p>12:14:18 8 what a court would do down the road. There were --</p> <p>12:14:29 9 pardon me. I had forgotten. This was not only about</p> <p>12:14:37 10 obtaining election records, but also about list</p> <p>12:14:40 11 maintenance. And that is even less frequently</p> <p>12:14:42 12 litigated. And so it was likely that no matter what a</p> <p>12:14:48 13 court might do in this area, it would in some way</p> <p>12:14:52 14 clarify or refine the existing law.</p> <p>12:15:26 15 Q. How did you become aware of the two reports at</p> <p>12:15:30 16 issue in this litigation, Alien Invasion I published</p> <p>12:15:38 17 September 30, 2016, and Alien Invasion II published in</p> <p>12:15:42 18 May of 2017?</p> <p>12:15:45 19 A. I don't recall. They were likely called to my</p> <p>12:15:55 20 attention in the press in some way, but I don't recall.</p> <p>12:15:59 21 Q. And at some point after the publication of</p> <p>12:16:21 22 Alien Invasion II, did you start contacting certain</p> <p>12:16:25 23 Virginia voters whose names appeared in one or more of</p> <p>12:16:30 24 the exhibits to Alien Invasion II?</p> <p>12:16:33 25 A. I did.</p>
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<p>12:12:07 1 BY MR. LOCKERBY:</p> <p>12:12:07 2 Q. Exhibit 26 is also among the documents that you</p> <p>12:12:11 3 produced. And you see it's an -- says it's an e-mail</p> <p>12:12:17 4 from justinlevitt@gmail.com. And it says it's to</p> <p>12:12:27 5 justinlevitt@lls.edu?</p> <p>12:12:31 6 A. Correct.</p> <p>12:12:31 7 Q. So you were e-mailing these documents from your</p> <p>12:12:37 8 personal e-mail address to your Loyola Law School</p> <p>12:12:41 9 address; is that right?</p> <p>12:12:42 10 A. Correct.</p> <p>12:12:42 11 Q. And the very first attachment is a copy of the</p> <p>12:12:48 12 complaint filed by PILF on behalf of the Virginia Voters</p> <p>12:12:55 13 Alliance and David Norcross against Anna Leider, or</p> <p>12:12:59 14 Leider, the registrar for the City of Alexandria.</p> <p>12:13:03 15 Why were you e-mailing yourself a copy of that?</p> <p>12:13:06 16 A. I thought this was an interesting case under</p> <p>12:13:09 17 Section 8 of the NVRA.</p> <p>12:13:11 18 Q. And why did you find it of interest?</p> <p>12:13:16 19 A. The availability of election records is</p> <p>12:13:21 20 something that isn't particularly frequently litigated;</p> <p>12:13:29 21 and so I'm interested in, among other things, cases that</p> <p>12:13:35 22 might have the potential to make new law in this area.</p> <p>12:13:38 23 These cases are sometimes exceedingly straightforward</p> <p>12:13:42 24 but sometimes not. And so this was -- I wanted to read</p> <p>12:13:46 25 more to see whether this was a case that was likely to</p>	<p>12:16:33 1 Q. Why did you do that?</p> <p>12:16:36 2 A. I wanted to find out if the claims were</p> <p>12:16:43 3 accurate in the report. Specifically, I wanted to see</p> <p>12:16:49 4 whether I could determine whether the individuals were</p> <p>12:16:51 5 citizens or noncitizens.</p> <p>12:17:01 6 Q. And why did you want to make that</p> <p>12:17:03 7 determination? For what purpose?</p> <p>12:17:04 8 A. I wanted to ascertain the accuracy of the</p> <p>12:17:08 9 claims in the report because I research, among other</p> <p>12:17:13 10 things, in the area of claims about voter fraud and</p> <p>12:17:18 11 their accuracy. Some of my other research is in the</p> <p>12:17:25 12 area of election administration and procedures that</p> <p>12:17:29 13 various registrars undertake. And I wasn't sure if</p> <p>12:17:32 14 there was a common thread to how individuals might have</p> <p>12:17:36 15 been incorrectly or inaccurately flagged or accurately</p> <p>12:17:44 16 or incorrectly flagged. And so wanted to see if I could</p> <p>12:17:48 17 determine from talking to the individuals themselves</p> <p>12:17:51 18 whether there was something that had caused them to be</p> <p>12:17:54 19 labeled as noncitizens.</p> <p>12:17:56 20 Q. Did you communicate with every Virginia voter</p> <p>12:18:01 21 identified in -- in exhibit to the report --</p> <p>12:18:01 22 A. No.</p> <p>12:18:08 23 Q. -- reports?</p> <p>12:18:09 24 How did you determine which ones to communicate</p> <p>12:18:10 25 with and which ones not to communicate with?</p>

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<p>12:18:14 1 A. Those who had e-mail addresses listed on the</p> <p>12:18:18 2 registration forms that were -- that were publicized as</p> <p>12:18:25 3 part of the -- an exhibit to the report, I attempted to</p> <p>12:18:32 4 contact. Those who did not have e-mail addresses listed</p> <p>12:18:39 5 particularly in registration forms attached to an</p> <p>12:18:43 6 exhibit to the report, I did not.</p> <p>12:18:44 7 Q. But you didn't attempt to contact -- are you</p> <p>12:18:52 8 familiar with a report attached as an exhibit to Alien</p> <p>12:18:59 9 Invasion II known as a VERIS report?</p> <p>12:19:02 10 A. I'm familiar with VERIS reports generally. I</p> <p>12:19:06 11 would have to see the particular report that you were</p> <p>12:19:08 12 referring to.</p> <p>12:19:18 13 Q. So is it your testimony that you contacted</p> <p>12:19:23 14 every individual for whom you could get an e-mail</p> <p>12:19:26 15 address? Is that right?</p> <p>12:19:29 16 MR. LEBOWITZ: Objection. Misstates testimony.</p> <p>12:19:31 17 MR. BRIDGES: Join.</p> <p>12:19:33 18 THE WITNESS: I believe -- there may have been</p> <p>12:19:41 19 some individuals who indicated on their registration</p> <p>12:19:47 20 forms that they were not citizens, and I don't believe</p> <p>12:19:51 21 that I attempted to contact them. If -- despite there</p> <p>12:19:55 22 being an e-mail on the registration form itself. I</p> <p>12:19:59 23 believe that I contacted every other individual for whom</p> <p>12:20:05 24 an e-mail address was listed.</p> <p>12:20:08 25 ///</p>	<p>12:21:41 1 publication of Alien Invasion II did you anticipate</p> <p>12:21:45 2 litigation?</p> <p>12:21:46 3 A. I can't recall the exact date.</p> <p>12:21:50 4 Q. Do you recall how soon after publication of</p> <p>12:21:55 5 Alien Invasion II you anticipated litigation?</p> <p>12:22:03 6 A. No.</p> <p>12:22:04 7 Q. And Virginia voters that you contacted were</p> <p>12:22:09 8 identified only in exhibits to Alien Invasion II; isn't</p> <p>12:22:16 9 that right?</p> <p>12:22:16 10 A. I don't know if those individuals have been</p> <p>12:22:20 11 identified anywhere else. I contacted them on the basis</p> <p>12:22:24 12 of their identification in Alien Invasion II. That's</p> <p>12:22:28 13 correct.</p> <p>12:22:28 14 Q. And at the time that you originally contacted</p> <p>12:22:34 15 those individuals, were you anticipating litigation?</p> <p>12:22:48 16 A. I anticipated that there might be conditions</p> <p>12:22:51 17 under which litigation might arise. I did not have</p> <p>12:22:56 18 particular litigation in mind.</p> <p>12:23:06 19 Q. And had you discussed with others the</p> <p>12:23:09 20 possibility that litigation might arise at the time you</p> <p>12:23:13 21 began contacting these Virginia voters?</p> <p>12:23:17 22 A. I don't believe so.</p> <p>12:23:22 23 Q. How long after you began contacting Virginia</p> <p>12:23:27 24 voters did you contemplate that litigation might arise?</p> <p>12:23:32 25 A. I -- I can't recall.</p>
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<p>12:20:08 1 BY MR. LOCKERBY:</p> <p>12:20:08 2 Q. Why did you not attempt to contact individuals</p> <p>12:20:14 3 who had indicated on their registration forms that they</p> <p>12:20:19 4 were not citizens?</p> <p>12:20:20 5 A. In an initial screen of the accuracy of the</p> <p>12:20:23 6 report, I considered that to be an indication that the</p> <p>12:20:27 7 individuals were not, in fact, citizens at the time.</p> <p>12:20:30 8 Q. The report was published in May 2017 and</p> <p>12:20:44 9 specifically May 27, 2017. How long after its</p> <p>12:20:53 10 publication were you anticipating litigation regarding</p> <p>12:20:56 11 the Alien Invasion II?</p> <p>12:21:01 12 MR. BRIDGES: Would you reread that question to</p> <p>12:21:03 13 me, please.</p> <p>12:21:03 14 (The record is read by the reporter as</p> <p>12:21:03 15 follows:</p> <p>12:20:34 16 "Q. The report was published in May 2017 and</p> <p>12:20:44 17 specifically May 27, 2017. How long after its</p> <p>12:20:53 18 publication were you anticipating litigation</p> <p>12:20:56 19 regarding the Alien Invasion II?")</p> <p>12:21:21 20 MR. LOCKERBY: And let me rephrase the question</p> <p>12:21:23 21 because actually I misstated something.</p> <p>12:21:25 22 BY MR. LOCKERBY:</p> <p>12:21:26 23 Q. Alien Invasion II -- the embargoed copies of</p> <p>12:21:29 24 the report went out on May 26, 2017, and was embargoed</p> <p>12:21:35 25 until 11:00 p.m., May 29, 2017. So at what point after</p>	<p>12:23:37 1 MR. LOCKERBY: We can go off the record for a</p> <p>12:23:38 2 minute.</p> <p>12:23:39 3 THE VIDEOGRAPHER: We're off the record at</p> <p>12:23:42 4 12:23 p.m.</p> <p>12:23:45 5 (A lunch recess is taken.)</p> <p>01:12:12 6 THE VIDEOGRAPHER: We are back on the record at</p> <p>01:12:14 7 1:12 p.m.</p> <p>01:12:14 8 BY MR. LOCKERBY:</p> <p>01:12:18 9 Q. Mr. Levitt, I'm going to show you a document.</p> <p>01:12:20 10 I'm not going to mark this one as an exhibit, but this</p> <p>01:12:23 11 is on file with the Court already as Exhibit B to</p> <p>01:12:27 12 defendant's answer, affirmative defenses, and</p> <p>01:12:31 13 third-party complaint; and it's numbered PILF Adams</p> <p>01:12:35 14 14567 through 68.</p> <p>01:12:57 15 A. Okay.</p> <p>01:12:59 16 Q. The top portion of this document is an e-mail</p> <p>01:13:04 17 from Edgardo Cortes, and you see below the body of it he</p> <p>01:13:08 18 identifies himself as the commissioner of the Virginia</p> <p>01:13:11 19 Department of Elections.</p> <p>01:13:12 20 A. I do.</p> <p>01:13:12 21 Q. Do you know Mr. Cortes?</p> <p>01:13:14 22 A. No. I know of him, but I do not know him.</p> <p>01:13:17 23 Q. And this e-mail is dated April 4, 2017, at</p> <p>01:13:24 24 10:30 a.m. As you see, it's addressed to two</p> <p>01:13:30 25 individuals at the Public Interest Legal Foundation,</p>

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<p>01:13:33 1 Bill Johnson and Shawna Powell?</p> <p>01:13:34 2 A. I see that it's 10:03:30. I guess --</p> <p>01:13:36 3 Q. Yeah, 10:03:30 a.m. You're absolutely right.</p> <p>01:13:41 4 In the third sentence Mr. Cortes writes, "This</p> <p>01:13:48 5 report shows individuals that were canceled due to</p> <p>01:13:53 6 self-reported noncitizen status and failed to complete</p> <p>01:13:57 7 an affirmation of citizenship in the allotted time frame</p> <p>01:14:02 8 and continued to be in canceled status. If an</p> <p>01:14:06 9 individual was previously canceled and then subsequently</p> <p>01:14:09 10 affirmed citizenship and was reregistered, they would no</p> <p>01:14:13 11 longer appear on this report because they would now be</p> <p>01:14:16 12 on active status." Do you see that?</p> <p>01:14:18 13 A. I do.</p> <p>01:14:19 14 Q. When you contacted various Virginia voters</p> <p>01:14:26 15 whose names appeared in exhibits to the alien invasion</p> <p>01:14:30 16 report, or reports, did you let them know about this</p> <p>01:14:35 17 e-mail from Mr. Cortes?</p> <p>01:14:36 18 A. I was not aware of this e-mail when I contact</p> <p>01:14:38 19 them. I don't believe --</p> <p>01:14:41 20 Q. When did you become aware of this e-mail?</p> <p>01:14:43 21 A. I think that the first time I've become aware</p> <p>01:14:46 22 of this e-mail was when you showed it to me moments ago.</p> <p>01:14:49 23 Q. Okay. So as part of your research into the</p> <p>01:14:55 24 accuracy of the alien invasion reports, you never came</p> <p>01:14:59 25 across this?</p>	<p>01:16:48 1 as Exhibit 28, please.</p> <p>01:16:48 2 (Whereupon the document referred to is marked</p> <p>01:16:48 3 by the reporter as Defense Exhibit 28 for</p> <p>01:17:03 4 identification.)</p> <p>01:17:03 5 THE WITNESS: Thank you.</p> <p>01:17:04 6 MR. BRIDGES: Thank you.</p> <p>01:17:05 7 MR. LOCKERBY: You're welcome.</p> <p>01:17:12 8 BY MR. LOCKERBY:</p> <p>01:17:12 9 Q. Exhibit 28 is a series of e-mails that we</p> <p>01:17:20 10 have -- have had marked as No. 31 from your production.</p> <p>01:17:27 11 Are these additional e-mails that you exchanged</p> <p>01:17:30 12 with various Virginia voters identified in the exhibits</p> <p>01:17:34 13 to the alien invasion reports?</p> <p>01:18:08 14 A. Yes.</p> <p>01:18:17 15 Q. And if you look at the very first page, at the</p> <p>01:18:22 16 bottom you see there is one e-mail that says it was sent</p> <p>01:18:26 17 on May 30, 2017?</p> <p>01:18:30 18 A. Yes.</p> <p>01:18:30 19 Q. And then it continues on the following page?</p> <p>01:18:35 20 A. Correct.</p> <p>01:18:44 21 Q. And the wording of that e-mail is similar to</p> <p>01:18:50 22 what you sent out to numerous voters; isn't that right?</p> <p>01:18:53 23 A. Correct.</p> <p>01:18:54 24 Q. And in that e-mail you identified yourself as a</p> <p>01:18:58 25 law professor doing research; isn't that right?</p>
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<p>01:15:01 1 A. Not that I'm aware of. It's possible it's one</p> <p>01:15:12 2 of the exhibits to the report, but I don't know that.</p> <p>01:15:25 3 Q. I'd like to have marked as Exhibit 27 --</p> <p>01:15:29 4 MR. BRIDGES: Twenty-eight.</p> <p>01:15:32 5 DEPOSITION OFFICER: Twenty-seven.</p> <p>01:15:33 6 MR. BRIDGES: This one was twenty-seven.</p> <p>01:15:35 7 THE WITNESS: That's not --</p> <p>01:15:36 8 MR. LOCKERBY: I didn't mark that.</p> <p>01:15:37 9 MR. BRIDGES: Oh, I'm sorry.</p> <p>01:15:41 10 MR. LOCKERBY: Like to have marked as</p> <p>01:15:43 11 Exhibit 27 a 562-page document that we have numbered 51.</p> <p>01:15:43 12 (Whereupon the document referred to is marked</p> <p>01:15:43 13 by the reporter as Defense Exhibit 27 for</p> <p>01:16:12 14 identification.)</p> <p>01:16:12 15 THE WITNESS: Thank you.</p> <p>01:16:16 16 BY MR. LOCKERBY:</p> <p>01:16:16 17 Q. Are the e-mails contained in Exhibit 27 some of</p> <p>01:16:22 18 the communications that you had with Virginia voters</p> <p>01:16:25 19 identified in exhibits to the alien invasion reports?</p> <p>01:16:31 20 A. I -- I don't want to confirm every single page.</p> <p>01:16:35 21 But yes. It appears, in flipping through, that these</p> <p>01:16:38 22 are e-mails -- these are some of the e-mails that I have</p> <p>01:16:41 23 with some of the individuals contained in some of those</p> <p>01:16:46 24 reports.</p> <p>01:16:46 25 MR. LOCKERBY: And I'd like to have this marked</p>	<p>01:19:02 1 A. Correct.</p> <p>01:19:02 2 Q. And it says, "It's in that capacity that I'm</p> <p>01:19:06 3 reaching out." Do you see that?</p> <p>01:19:08 4 A. I do.</p> <p>01:19:15 5 Q. And then back on the first page in your</p> <p>01:19:23 6 June 26, 2017, e-mail, 2:48 p.m., at that point you</p> <p>01:19:29 7 hadn't heard back from Mr. Weidenhof, or Weidenhof, had</p> <p>01:19:33 8 you?</p> <p>01:19:33 9 A. I don't believe that I had, no.</p> <p>01:19:34 10 Q. And this was a form e-mail that you sent to</p> <p>01:19:42 11 citizens from whom you hadn't heard back in response to</p> <p>01:19:46 12 the first report; isn't that right?</p> <p>01:19:48 13 A. From individuals from whom I had not heard</p> <p>01:19:51 14 back, correct.</p> <p>01:19:51 15 Q. Yes. And again, you state, "I'm a law</p> <p>01:19:58 16 professor. I spend much of my time researching election</p> <p>01:20:02 17 issues." Do you see that?</p> <p>01:20:03 18 A. Yes.</p> <p>01:20:03 19 Q. And you said, "I am one of several individuals</p> <p>01:20:07 20 looking into the claims in the report."</p> <p>01:20:10 21 Other than you, who else was looking into the</p> <p>01:20:12 22 claims in the report, as far as you knew, as of June 26,</p> <p>01:20:19 23 2017?</p> <p>01:20:19 24 A. As far as I knew, there were several reporters</p> <p>01:20:24 25 who had asked about some of the claims in the report. I</p>

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<p>01:20:27 1 did not know if there were others. And I can't recall</p> <p>01:20:32 2 the particular reporters. It's possible that I had</p> <p>01:20:40 3 already had conversations with some of the counsel in</p> <p>01:20:52 4 this case at that time, but I do not know the dates.</p> <p>01:20:54 5 Q. And as far as you knew, the counsel were not</p> <p>01:21:04 6 contacting Virginia voters at that point, were they?</p> <p>01:21:09 7 MR. GORMAN: Objection to the extent that</p> <p>01:21:10 8 question asks you to reveal confidential work product</p> <p>01:21:10 9 exchanged with Protect Democracy Project and the</p> <p>01:21:16 10 Southern Coalition for Social Justice.</p> <p>01:21:17 11 MR. BRIDGES: Also, calls for speculation.</p> <p>01:21:20 12 Lacks foundation.</p> <p>01:21:22 13 Subject to my objections and the admonition of</p> <p>01:21:26 14 counsel with respect to their work product, you may</p> <p>01:21:29 15 respond.</p> <p>01:21:29 16 THE WITNESS: I -- I don't know if I can</p> <p>01:21:31 17 respond -- I don't know if there is anything to which I</p> <p>01:21:34 18 can respond that would not involve revealing work</p> <p>01:21:36 19 product of counsel.</p> <p>01:21:38 20 BY MR. LOCKERBY:</p> <p>01:21:38 21 Q. And the work product you're talking about is</p> <p>01:21:40 22 not your own work product. It's the work product of the</p> <p>01:21:45 23 Southern Coalition For Social Justice and the Protect</p> <p>01:21:48 24 Democracy Project; is that right?</p> <p>01:21:53 25 A. In your question, yes, that's correct.</p>	<p>01:24:29 1 identified in PILF/VVA Reports." And I realize you</p> <p>01:24:34 2 haven't seen this before --</p> <p>01:24:35 3 A. Correct.</p> <p>01:24:35 4 Q. -- because you didn't prepare it. But the</p> <p>01:24:39 5 documents that we've looked at already from which this</p> <p>01:24:44 6 was prepared are not necessarily all of your</p> <p>01:24:47 7 communications with Virginia voters identified in the</p> <p>01:24:52 8 reports; correct?</p> <p>01:24:52 9 (Whereupon the document referred to is marked</p> <p>01:24:52 10 by the reporter as Defense Exhibit 30 for</p> <p>01:24:52 11 identification.)</p> <p>01:24:53 12 A. Because I don't know --</p> <p>01:24:54 13 MR. BRIDGES: Objection. Vague and ambiguous.</p> <p>01:24:57 14 You may answer, if you understand the question.</p> <p>01:24:59 15 THE WITNESS: I understand the question.</p> <p>01:25:00 16 I don't know how you prepared this, so I don't</p> <p>01:25:02 17 know that I can answer.</p> <p>01:25:03 18 BY MR. LOCKERBY:</p> <p>01:25:04 19 Q. Well, you do know that Exhibits 27, 28, and 29</p> <p>01:25:10 20 do not contain all of your communications with Virginia</p> <p>01:25:14 21 voters about the reports. That you do know; correct?</p> <p>01:25:18 22 A. Correct.</p> <p>01:25:19 23 Q. Thank you.</p> <p>01:25:28 24 And one of the purposes of your communications</p> <p>01:25:35 25 with the voters identified in Exhibits 27, 28, 29, and</p>
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<p>01:22:03 1 MR. LOCKERBY: I'd like to have this marked as</p> <p>01:22:06 2 Exhibit 29, please.</p> <p>01:22:06 3 (Whereupon the document referred to is marked</p> <p>01:22:06 4 by the reporter as Defense Exhibit 29 for</p> <p>01:22:22 5 identification.)</p> <p>01:22:22 6 THE WITNESS: Thank you.</p> <p>01:22:25 7 BY MR. LOCKERBY:</p> <p>01:22:26 8 Q. Exhibit 29 is another document that you</p> <p>01:22:30 9 produced that we've marked as No. 4. And if you could</p> <p>01:22:35 10 look at the last page. Do you see there is an e-mail</p> <p>01:22:41 11 exchange dated Tuesday, July 18, 2017?</p> <p>01:22:44 12 A. Yes.</p> <p>01:22:45 13 Q. And the top portion of the e-mail exchange is</p> <p>01:22:51 14 redacted. Do you see that?</p> <p>01:22:53 15 A. I do.</p> <p>01:22:53 16 Q. Was this another e-mail exchange that you had</p> <p>01:22:59 17 with a Virginia voter identified in exhibits to the</p> <p>01:23:07 18 alien invasion reports?</p> <p>01:23:10 19 A. The final page is, yes.</p> <p>01:23:12 20 Q. Yes. I'm simply asking about the final page.</p> <p>01:23:15 21 A. Yes.</p> <p>01:23:15 22 Q. I'd like to have this marked as Exhibit 30,</p> <p>01:23:52 23 please. Exhibit 30 is a document that we've prepared</p> <p>01:24:20 24 entitled "Federal Evidence Rule 1006 Summary of Justin</p> <p>01:24:24 25 Levitt's E-Mail Exchanges with Virginia Voters</p>	<p>01:25:42 1 30 was to try to discredit Christian Adams; isn't that</p> <p>01:25:42 2 right?</p> <p>01:25:49 3 A. No.</p> <p>01:25:49 4 MR. LEBOWITZ: Objection.</p> <p>01:25:49 5 THE WITNESS: No.</p> <p>01:25:50 6 BY MR. LOCKERBY:</p> <p>01:25:50 7 Q. So you weren't trying to discredit him?</p> <p>01:25:52 8 A. No.</p> <p>01:25:53 9 Q. In fact, you were also trying to discredit</p> <p>01:25:57 10 PILF; isn't that right?</p> <p>01:26:00 11 MR. LEBOWITZ: Objection.</p> <p>01:26:01 12 THE WITNESS: I can't answer also because I</p> <p>01:26:02 13 wasn't trying to discredit Mr. Adams; and I would also</p> <p>01:26:05 14 answer, no, I was not trying to discredit PILF.</p> <p>01:26:08 15 BY MR. LOCKERBY:</p> <p>01:26:08 16 Q. So is it your testimony that you're not trying</p> <p>01:26:11 17 to discredit the presidential advisory commission on</p> <p>01:26:15 18 election integrity, to which Mr. Adams was appointed?</p> <p>01:26:19 19 A. I -- I don't know that I understand what you</p> <p>01:26:35 20 mean by "trying to discredit" in that question. I</p> <p>01:26:41 21 thought that some of the individuals appointed to the</p> <p>01:26:45 22 commission and some of the commission's methods were not</p> <p>01:26:48 23 worthy of crediting. I don't know -- I don't know that</p> <p>01:26:53 24 I can answer your question other than that.</p> <p>01:26:56 25 Q. Starting in May of 2017, you summarized what</p>

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<p>01:27:03 1 certain Virginia voters had told you in a series of</p> <p>01:27:07 2 tweets, e-mails, and blog posts; isn't that right?</p> <p>01:27:11 3 A. Correct.</p> <p>01:27:12 4 Q. And in connection with the research that you</p> <p>01:27:15 5 claim to be performing, you discovered some Virginia</p> <p>01:27:20 6 voters who had not been U.S. citizens at the time they</p> <p>01:27:24 7 registered to vote; isn't that right?</p> <p>01:27:27 8 A. Yes.</p> <p>01:27:30 9 Q. And, in fact, you told Vanita Gupta that,</p> <p>01:27:34 10 didn't you?</p> <p>01:27:35 11 A. I don't recall whether I did or not. I may</p> <p>01:27:38 12 have.</p> <p>01:27:38 13 Q. And similarly, in connection with the research</p> <p>01:27:42 14 that you claim to be performing, you discovered Virginia</p> <p>01:27:47 15 voters who were not U.S. citizens at the time they had</p> <p>01:27:51 16 cast certain ballots; isn't that right?</p> <p>01:27:54 17 A. If we're talking about the research for this</p> <p>01:28:02 18 report, I don't recall whether I know the voting history</p> <p>01:28:06 19 of the individuals named in this report; and so I don't</p> <p>01:28:08 20 know whether they cast ballots or not.</p> <p>01:28:14 21 I don't recall ever seeing their voting</p> <p>01:28:16 22 history. I might have in the course of the research,</p> <p>01:28:18 23 but I don't remember.</p> <p>01:28:19 24 Q. Well -- but you did talk with some Virginia</p> <p>01:28:22 25 voters who were noncitizens; right?</p>	<p>01:30:33 1 MR. BRIDGES: Objection. Misstates testimony.</p> <p>02:42:18 2 THE WITNESS: I said that I spoke to reporters</p> <p>02:42:20 3 about that.</p> <p>02:42:34 4 BY MR. LOCKERBY:</p> <p>02:42:35 5 Q. In your answer to my prior question, you</p> <p>02:42:39 6 stated, "I can recall occasions on which I spoke to</p> <p>02:42:42 7 reporters about that. I don't recall whether that made</p> <p>02:42:47 8 it into the final story or not, so I don't know whether</p> <p>02:42:50 9 that was ever published." I see. When you say you</p> <p>02:42:54 10 spoke to reporters about that, what is the that to which</p> <p>02:42:58 11 you were referring?</p> <p>02:42:59 12 A. The predicate of your question which I</p> <p>02:43:03 13 understood to be whether I had -- the fact that certain</p> <p>02:43:10 14 individuals listed in the report were noncitizens when</p> <p>02:43:13 15 they registered to vote.</p> <p>02:43:16 16 DEPOSITION OFFICER: Counsel, I need break. My</p> <p>02:43:18 17 computer froze.</p> <p>02:43:19 18 MR. LOCKERBY: Okay.</p> <p>02:43:20 19 THE VIDEOGRAPHER: We're off the record at</p> <p>02:43:23 20 1:31 p.m.</p> <p>01:36:21 21 (A recess is taken.)</p> <p>01:36:21 22 THE VIDEOGRAPHER: We are back on the record at</p> <p>01:36:24 23 1:36 p.m.</p> <p>01:36:26 24 MR. LOCKERBY: I'm sorry. If you could please</p> <p>01:36:29 25 read the last portion before we went off, that would be</p>
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<p>01:28:30 1 A. I don't know.</p> <p>01:28:45 2 Q. Did you -- did you ever publish your findings</p> <p>01:28:49 3 that certain Virginia voters who were not U.S. citizens</p> <p>01:28:56 4 -- or that certain Virginia voters had registered to</p> <p>01:28:59 5 vote at a time when they were not U.S. citizens?</p> <p>01:29:01 6 A. I did not publish findings about this report or</p> <p>01:29:09 7 about Virginia noncitizens voting at all, and so I don't</p> <p>01:29:17 8 consider that I came to conclusive findings one way or</p> <p>01:29:21 9 another.</p> <p>01:29:28 10 Q. You have commented publicly on the alien</p> <p>01:29:34 11 invasion reports; isn't that right?</p> <p>01:29:36 12 A. I have.</p> <p>01:29:37 13 Q. And in your public comments have you told --</p> <p>01:29:40 14 have you stated that some of the people identified as</p> <p>01:29:45 15 noncitizens in those reports, in fact, were noncitizens?</p> <p>01:29:51 16 A. I don't remember. I may have.</p> <p>01:29:57 17 Q. Sitting here today, you can't think of any</p> <p>01:30:00 18 instance in which you did that; correct?</p> <p>01:30:06 19 A. I can't think of any instance in -- in which</p> <p>01:30:09 20 those comments have become public. I can recall</p> <p>01:30:13 21 occasions on which I spoke to reporters about that. I</p> <p>01:30:19 22 don't recall whether that made it into the final story</p> <p>01:30:22 23 or not, so I don't know whether that was ever published.</p> <p>01:30:25 24 Q. When you say you spoke to voters about that,</p> <p>01:30:30 25 what's the "that" to which you're referring?</p>	<p>01:36:32 1 helpful.</p> <p>01:36:36 2 DEPOSITION OFFICER: I can't. I have to open</p> <p>01:36:37 3 up a file.</p> <p>01:36:39 4 MR. LOCKERBY: But you did it after we were</p> <p>01:36:41 5 done with the question and answer; correct?</p> <p>01:36:47 6 DEPOSITION OFFICER: I took it down. I just</p> <p>01:36:48 7 can't open up the file right now.</p> <p>01:36:51 8 MR. LOCKERBY: That's fine. That's fine.</p> <p>01:36:52 9 I'd like to have this marked as Exhibit 31,</p> <p>01:36:55 10 please.</p> <p>01:37:13 11 Did I give you two copies of that by mistake?</p> <p>01:37:13 12 (Whereupon the document referred to is marked</p> <p>01:37:13 13 by the reporter as Defense Exhibit 31 for</p> <p>01:37:16 14 identification.)</p> <p>01:37:16 15 THE WITNESS: Yes.</p> <p>01:37:16 16 MR. LOCKERBY: Thank you.</p> <p>01:37:18 17 THE WITNESS: You bet.</p> <p>01:37:19 18 BY MR. LOCKERBY:</p> <p>01:37:22 19 Q. Exhibit 31 has been marked by us as Document</p> <p>01:37:29 20 16-1 through 16-7. This is a spreadsheet that you</p> <p>01:37:36 21 yourself created regarding your communications with</p> <p>01:37:41 22 Virginia voters; correct?</p> <p>01:37:43 23 A. Correct.</p> <p>01:37:44 24 Q. And the column e-mail indicates whether you, in</p> <p>01:37:55 25 fact, sent an e-mail to that particular voter; isn't</p>

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<p>01:37:57 1 that right?</p> <p>01:37:58 2 A. Correct.</p> <p>01:37:58 3 Q. And was the text of the original e-mail the</p> <p>01:38:10 4 same as the May 30, 2017, e-mail that we looked at</p> <p>01:38:17 5 earlier as part of Exhibit 28?</p> <p>01:38:34 6 It was on the second page of Exhibit 28.</p> <p>01:38:38 7 A. Thank you.</p> <p>01:38:41 8 The initial e-mail to, I believe, each</p> <p>01:38:45 9 individual would have been approximately the same. I</p> <p>01:38:53 10 did -- something may have occurred to me when I sent the</p> <p>01:38:54 11 first e-mail. And so after sending a few, I modified</p> <p>01:38:58 12 the text, approximately. It's also possible that I</p> <p>01:39:02 13 didn't e-mail all of these people at the same time, and</p> <p>01:39:05 14 so I might -- events in the world might have changed.</p> <p>01:39:10 15 Some of the e-mails reference different current events.</p> <p>01:39:13 16 So I can't swear that every single one of the</p> <p>01:39:15 17 e-mails to every single one of these people was</p> <p>01:39:18 18 initially the same, but they were certainly similar.</p> <p>01:39:24 19 MR. GORMAN: Can we get clarification. Was</p> <p>01:39:26 20 this document created in anticipation of litigation?</p> <p>01:39:30 21 MR. LOCKERBY: I'm going to object. That's --</p> <p>01:39:37 22 I'm asking questions at this point, and that's not an</p> <p>01:39:42 23 objection. That's simply a gratuitous question.</p> <p>01:39:47 24 MR. GORMAN: I just want to make sure this</p> <p>01:39:49 25 document is not a privilege or subject to a claim of</p>	<p>01:41:15 1 of Augustine Tsibu-Gyan, you've written, "Okay with</p> <p>01:41:21 2 using his name in connection with debunking the report.</p> <p>01:41:26 3 Doesn't want to talk to reporters."</p> <p>01:41:28 4 Those were your words; correct?</p> <p>01:41:30 5 A. Correct.</p> <p>01:41:43 6 Q. And then under Wagner Walendy you wrote, "Gave</p> <p>01:41:48 7 him Allison's contact."</p> <p>01:41:49 8 You gave him Allison Riggs' contact</p> <p>01:41:53 9 information; isn't that right?</p> <p>01:41:55 10 A. Correct.</p> <p>01:41:56 11 Q. And you never provided any legal advice to</p> <p>01:42:04 12 Wagner Walendy yourself, did you?</p> <p>01:42:07 13 MR. BRIDGES: Objection. I'll withdraw that.</p> <p>01:42:11 14 You're not asking for the substance of communication.</p> <p>01:42:29 15 THE WITNESS: I may have offered some advice</p> <p>01:42:31 16 that he would have construed as legal advice, but I do</p> <p>01:42:34 17 not know.</p> <p>01:42:37 18 MR. GORMAN: I've got to object.</p> <p>01:42:39 19 Based on the contents of this document, it</p> <p>01:42:41 20 appears that it contains references to communications</p> <p>01:42:45 21 with the Protect Democracy Project and the Southern</p> <p>01:42:50 22 Coalition for Social Justice in anticipation of</p> <p>01:42:51 23 litigation. I think this is work product protected.</p> <p>01:42:53 24 MR. LOCKERBY: On its -- I'm not going to</p> <p>01:42:56 25 debate the issue with you. On its face, it reflects</p>
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<p>01:39:52 1 work product immunity.</p> <p>01:39:54 2 MR. LOCKERBY: You have other ways of doing</p> <p>01:39:56 3 that.</p> <p>01:39:57 4 I'd like to have this marked as Exhibit 32,</p> <p>01:40:17 5 please.</p> <p>01:40:17 6 (Whereupon the document referred to is marked</p> <p>01:40:17 7 by the reporter as Defense Exhibit 32 for</p> <p>01:40:17 8 identification.)</p> <p>01:40:27 9 BY MR. LOCKERBY:</p> <p>01:40:27 10 Q. Exhibit 32 is a document that we've numbered</p> <p>01:40:30 11 13, and these are notes that reflected your</p> <p>01:40:35 12 communications with certain Virginia voters; isn't --</p> <p>01:40:38 13 isn't that right?</p> <p>01:40:45 14 A. Yes.</p> <p>01:40:48 15 Q. And at the time of these communications, your</p> <p>01:40:50 16 purpose in contacting them was to try to debunk the</p> <p>01:40:55 17 Alien Invasion reports; isn't that right?</p> <p>01:40:58 18 A. No.</p> <p>01:40:58 19 Q. Well, if you look under the name Raza Latif,</p> <p>01:41:04 20 you see you've written, "Okay with using name in</p> <p>01:41:07 21 connection with debunking the report"?</p> <p>01:41:09 22 A. Correct.</p> <p>01:41:09 23 Q. Those were your words; right?</p> <p>01:41:12 24 A. Correct.</p> <p>01:41:12 25 Q. And then similarly, if you look under the name</p>	<p>01:43:00 1 only communications with Virginia voters.</p> <p>01:43:03 2 MR. GORMAN: It reflects communications with</p> <p>01:43:05 3 the Southern Coalition for Social Justice.</p> <p>01:43:09 4 MR. LOCKERBY: Understand your position.</p> <p>01:43:16 5 Under --</p> <p>01:43:17 6 MR. GORMAN: I object to any further</p> <p>01:43:19 7 questioning about this document.</p> <p>01:43:20 8 MR. LOCKERBY: You've noted your objection.</p> <p>01:43:21 9 BY MR. LOCKERBY:</p> <p>01:43:22 10 Q. Under the heading Kimone Campbell at the</p> <p>01:43:25 11 bottom, you've written, "May be interested in further</p> <p>01:43:30 12 action. Wants to review further. Okay with using story</p> <p>01:43:34 13 but not name."</p> <p>01:43:38 14 The reference to "using story but not name" --</p> <p>01:43:40 15 that was for purposes of reporters; correct?</p> <p>01:43:43 16 MR. BRIDGES: Objection.</p> <p>01:43:45 17 Based on Mr. Gorman's objection and asserting</p> <p>01:43:49 18 that it's subject to his work product -- or his client's</p> <p>01:43:51 19 work product, you're not the holder of that.</p> <p>01:43:54 20 I'm going to have to instruct you not to answer</p> <p>01:43:55 21 based on his objection.</p> <p>01:44:05 22 BY MR. LOCKERBY:</p> <p>01:44:05 23 Q. Under Fabian Lopez you've written, "Not okay</p> <p>01:44:10 24 with using name. Okay with describing story."</p> <p>01:44:18 25 Did Mr. Lopez tell you that?</p>

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<p>01:44:21 1 MR. BRIDGES: Same objection. Same</p> <p>01:44:25 2 instruction.</p> <p>01:44:29 3 BY MR. LOCKERBY:</p> <p>01:44:30 4 Q. Under the name Mary Kanani, at the bottom</p> <p>01:44:36 5 you've written, "Registered now. Okay with talking</p> <p>01:44:39 6 about situation but not using name."</p> <p>01:44:44 7 Again, you were talking with Mary Kanani about</p> <p>01:44:48 8 possibly publicizing her situation but not using her</p> <p>01:44:53 9 name in litigation; isn't that right?</p> <p>01:44:56 10 MR. BRIDGES: Same objection. Same</p> <p>01:44:58 11 instruction.</p> <p>01:45:08 12 MR. GORMAN: Counsel, there's been an objection</p> <p>01:45:09 13 to work product; and you're continuing to question him</p> <p>01:45:11 14 about this document. I mean, it's not every line of the</p> <p>01:45:13 15 document; but there are lines in this document that</p> <p>01:45:16 16 contain references to communication with plaintiff's</p> <p>01:45:20 17 counsel.</p> <p>01:45:21 18 MR. LOCKERBY: I haven't asked about any of</p> <p>01:45:23 19 those, but I'm not going to --</p> <p>01:45:23 20 MR. GORMAN: You specifically did ask about</p> <p>01:45:25 21 those.</p> <p>01:45:25 22 BY MR. LOCKERBY:</p> <p>01:45:27 23 Q. Under the name Luciania Freeman, where you</p> <p>01:45:34 24 write, "May be okay with using name but scared," that</p> <p>01:45:37 25 notation reflects a communication with Luciania Freeman,</p>	<p>01:47:15 1 product --</p> <p>01:47:15 2 MR. GORMAN: Well, then --</p> <p>01:47:15 3 MR. LOCKERBY: -- testimony.</p> <p>01:47:16 4 MR. GORMAN: -- just put the document away and</p> <p>01:47:17 5 ask him about his communications with these individuals.</p> <p>01:47:19 6 MR. LOCKERBY: I'm not putting the document</p> <p>01:47:20 7 away.</p> <p>01:47:21 8 BY MR. LOCKERBY:</p> <p>01:47:22 9 Q. Under Fabian Lopez, where you've written, "Not</p> <p>01:47:26 10 okay with using name," that statement reflected your</p> <p>01:47:34 11 communications with Fabian Lopez, not your</p> <p>01:47:37 12 communications with attorneys at the Southern Coalition</p> <p>01:47:41 13 for Social Justice or the Protect Democracy Project;</p> <p>01:47:46 14 isn't that right?</p> <p>01:47:46 15 A. Correct.</p> <p>01:47:47 16 Q. And then on the page before, under Kimone</p> <p>01:47:55 17 Campbell, where you've written at the bottom, "May be</p> <p>01:47:59 18 interested in further action. Wants to review further.</p> <p>01:48:02 19 Okay with using story but not name," that statement --</p> <p>01:48:09 20 or those two sentences reflect your communications with</p> <p>01:48:15 21 Kimone Campbell, not with attorneys at the Southern</p> <p>01:48:20 22 Coalition for Social Justice or the Protect Democracy</p> <p>01:48:22 23 Project; isn't that right?</p> <p>01:48:23 24 A. One of those statements reflects potential</p> <p>01:48:31 25 legal advice that a client may have anticipated, and so</p>
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<p>01:45:43 1 not with the Southern Coalition for Social Justice or</p> <p>01:45:49 2 the Protect Democracy Project, does it?</p> <p>01:45:52 3 A. That reflects a communication with Luciania</p> <p>01:45:57 4 Freeman. That is correct.</p> <p>01:46:01 5 Q. And that communication with Luciania Freeman</p> <p>01:46:04 6 did not reflect the work product of any lawyers at the</p> <p>01:46:12 7 Southern Coalition for Social Justice or the Protect</p> <p>01:46:16 8 Democracy Project, did it?</p> <p>01:46:17 9 A. Correct.</p> <p>01:46:25 10 Q. Moving back up the page.</p> <p>01:46:33 11 Under Mary Kanani, when you wrote, "Okay with</p> <p>01:46:37 12 talking about situation but not using name," that</p> <p>01:46:40 13 statement reflected your communications with Mary</p> <p>01:46:44 14 Kanani, not your communications with attorneys at the</p> <p>01:46:47 15 Southern Coalition for Social Justice or the Protect</p> <p>01:46:51 16 Democracy Project; isn't that true?</p> <p>01:46:54 17 A. Correct.</p> <p>01:46:57 18 MR. GORMAN: Mr. Lockerby, I don't think you</p> <p>01:47:00 19 understand my point. You have sentences in here that</p> <p>01:47:01 20 refer to communications with my clients in anticipation</p> <p>01:47:04 21 of litigation. The document contains information that</p> <p>01:47:08 22 is work product protected, and you're continuing to ask</p> <p>01:47:10 23 about it.</p> <p>01:47:11 24 MR. LOCKERBY: I'm not, actually. The</p> <p>01:47:12 25 questions I'm asking him have nothing to do with work</p>	<p>01:48:34 1 I don't feel comfortable answering that question</p> <p>01:48:37 2 without --</p> <p>01:48:37 3 Q. Okay.</p> <p>01:48:39 4 MR. GORMAN: The witness has just testified</p> <p>01:48:40 5 this document contains information that may be</p> <p>01:48:43 6 attorney-client privilege, and you're continuing to ask</p> <p>01:48:46 7 about it.</p> <p>01:48:46 8 MR. LOCKERBY: Under Kimone --</p> <p>01:48:47 9 MR. GORMAN: This document should clawed back.</p> <p>01:48:49 10 This is outrageous.</p> <p>01:48:50 11 MR. LOCKERBY: What is outrageous is your</p> <p>01:48:52 12 interference in the deposition.</p> <p>01:48:53 13 BY MR. LOCKERBY:</p> <p>01:48:54 14 Q. Under Kimone Campbell, the statement down at</p> <p>01:48:58 15 the bottom, the very last sentence -- or two sentences</p> <p>01:49:03 16 at the bottom, those reflect your communications with</p> <p>01:49:07 17 Kimone Campbell, not with attorneys for the Southern</p> <p>01:49:12 18 Coalition for Social Justice or the Protect Democracy</p> <p>01:49:15 19 Project; isn't that right?</p> <p>01:49:15 20 MR. BRIDGES: Based upon your recollection, I'm</p> <p>01:49:18 21 objecting that that invades the attorney-client</p> <p>01:49:20 22 privilege.</p> <p>01:49:21 23 On that basis, I'm instructing you not to</p> <p>01:49:23 24 answer.</p> <p>01:49:23 25 And we will, on that basis, be making a request</p>

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<p>01:49:27 1 to claw back this document for redaction, if no other</p> <p>01:49:31 2 purpose.</p> <p>01:49:31 3 You're so advised.</p> <p>01:49:43 4 MR. LOCKERBY: Well, what we're going to have</p> <p>01:49:45 5 to do with that is that's an issue that we're going to</p> <p>01:49:48 6 have to have a federal judge review these in camera and</p> <p>01:49:52 7 make that -- that determination. But we can talk about</p> <p>01:49:54 8 that.</p> <p>01:49:55 9 MR. GORMAN: You're refusing to turn back the</p> <p>01:49:57 10 document? He's -- he's made a clawback request.</p> <p>01:50:01 11 MR. LOCKERBY: I'm refusing at this time. I'm</p> <p>01:50:04 12 suggesting that rather than engaging in self-help on</p> <p>01:50:08 13 either side -- don't laugh at me.</p> <p>01:50:09 14 MR. GORMAN: I'm just --</p> <p>01:50:10 15 MR. LOCKERBY: Do not -- you need to show --</p> <p>01:50:13 16 you need to act properly during this deposition.</p> <p>01:50:17 17 I'm saying that that's a determination that</p> <p>01:50:19 18 needs to be made by a judge, and it's not going to be</p> <p>01:50:23 19 made by me. It's not going to be made by you.</p> <p>01:50:26 20 MR. BRIDGES: My understanding is -- correct me</p> <p>01:50:28 21 if I'm wrong -- there is a protective order in this</p> <p>01:50:30 22 case.</p> <p>01:50:30 23 MR. LOCKERBY: There is.</p> <p>01:50:30 24 MR. BRIDGES: And the protective order has a</p> <p>01:50:31 25 clawback provision in it; correct?</p>	<p>01:51:57 1 please.</p> <p>01:51:57 2 And just anticipating the objection, there are</p> <p>01:52:01 3 pages of Exhibit 33 that are the same as Exhibit 32. So</p> <p>01:52:06 4 I understand you have the same objections. There are</p> <p>01:52:08 5 other pages that are different, and you may not have the</p> <p>01:52:11 6 same objections. And I'm going to ask about those.</p> <p>01:52:11 7 (Whereupon the document referred to is marked</p> <p>01:52:11 8 by the reporter as Defense Exhibit 33 for</p> <p>01:52:14 9 identification.)</p> <p>01:52:14 10 MR. BRIDGES: Let me look at this. Perhaps we</p> <p>01:52:17 11 should separate that because you put it together in this</p> <p>01:52:19 12 form.</p> <p>01:52:20 13 MR. LOCKERBY: No. Actually, I didn't put it</p> <p>01:52:21 14 together in this form. This is how it was produced.</p> <p>01:52:37 15 MR. GORMAN: Yeah. I object. This document</p> <p>01:52:39 16 reflects confidential communications with Southern</p> <p>01:52:43 17 Coalition for Social Justice at a minimum.</p> <p>01:52:45 18 MR. LOCKERBY: I think it would be helpful to</p> <p>01:52:47 19 have counsel identify on the record which pages of this</p> <p>01:52:52 20 document supposedly reflect confidential communications</p> <p>01:52:56 21 with Southern Coalition for Social Justice.</p> <p>01:53:02 22 MR. GORMAN: There are references to an</p> <p>01:53:04 23 attorney and to communications with attorney at the</p> <p>01:53:06 24 Southern Coalition for Social Justice.</p> <p>01:53:09 25 MR. LOCKERBY: My question was, What pages and</p>
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<p>01:50:33 1 MR. LOCKERBY: It does.</p> <p>01:50:34 2 MR. BRIDGES: And does that protective order</p> <p>01:50:36 3 activate such that when the clawback request is made,</p> <p>01:50:40 4 the document is supposed to be returned pending a</p> <p>01:50:43 5 resolution of that action or challenge --</p> <p>01:50:44 6 MR. LOCKERBY: It may well say that. And if</p> <p>01:50:46 7 it's --</p> <p>01:50:46 8 MR. BRIDGES: -- based -- I'm sorry. Let me</p> <p>01:50:48 9 finish.</p> <p>01:50:48 10 MR. LOCKERBY: Absolutely.</p> <p>01:50:48 11 MR. BRIDGES: And based upon that, I am making</p> <p>01:50:50 12 the request that copies of this document be returned to</p> <p>01:50:54 13 me at this time pursuant to that protective order</p> <p>01:50:56 14 subject, of course, to you doing whatever you like under</p> <p>01:50:59 15 that protective order to reobtain a copy of that</p> <p>01:51:01 16 document.</p> <p>01:51:01 17 MR. LOCKERBY: Okay. If it says that, that's</p> <p>01:51:04 18 what we'll do. I don't have it in front of me. And</p> <p>01:51:06 19 if -- I could give you every copy in front of me right</p> <p>01:51:11 20 now, and that would not address your request because</p> <p>01:51:14 21 there are other copies out there. During a break, we'll</p> <p>01:51:17 22 look at the protective order; but either way, this is an</p> <p>01:51:20 23 issue that -- it will need to be taken up with the</p> <p>01:51:24 24 federal court.</p> <p>01:51:54 25 I'd like to have this marked as Exhibit 33,</p>	<p>01:53:12 1 lines of this --</p> <p>01:53:12 2 MR. GORMAN: That information -- the</p> <p>01:53:13 3 information is work product protected. It's throughout</p> <p>01:53:17 4 the document. I mean, it's -- it's not a significant</p> <p>01:53:26 5 number of redactions. It --</p> <p>01:53:28 6 MR. LOCKERBY: Well, it is in view of the fact</p> <p>01:53:30 7 these documents were produced a while ago, that counsel</p> <p>01:53:35 8 for Southern Coalition for Social Justice and the</p> <p>01:53:39 9 Protect Democracy Project were late as it was in</p> <p>01:53:41 10 asserting the objection. Plenty of time to withhold or</p> <p>01:53:46 11 redact documents. And clearly, not all of this has --</p> <p>01:53:52 12 in fact, most of it has nothing to do with</p> <p>01:53:55 13 communications with Southern Coalition for Social</p> <p>01:53:59 14 Justice and the Protect Democracy Project.</p> <p>01:54:01 15 We're on a very tight discovery deadline in</p> <p>01:54:03 16 this case; and most of this has to do with facts, not</p> <p>01:54:10 17 attorney mental impressions or communications relevant</p> <p>01:54:13 18 to the claims and defenses. And our discovery of the</p> <p>01:54:17 19 facts is being obstructed here. There is nothing work</p> <p>01:54:21 20 product about saying that someone who's native born and</p> <p>01:54:25 21 has a passport, birth certificate, for example.</p> <p>01:54:28 22 MR. GORMAN: Yeah. No. So let me -- let me</p> <p>01:54:31 23 just see if I can propose something. Because you're</p> <p>01:54:35 24 right. There are -- there are references in this</p> <p>01:54:37 25 document that I do not claim any work product protection</p>

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<p>01:54:41 1 over.</p> <p>01:54:41 2 We could -- you could proceed with questioning.</p> <p>01:54:44 3 We could decline to enter this document into the record</p> <p>01:54:52 4 and provide you with a redacted version that deletes the</p> <p>01:54:54 5 few words on each page that I believe reflect</p> <p>01:54:57 6 confidential communications with Southern Coalition for</p> <p>01:54:57 7 Social Justice.</p> <p>01:55:02 8 If you're asking about facts that aren't work</p> <p>01:55:05 9 product protected, then it won't affect the exhibit.</p> <p>01:55:07 10 MR. LOCKERBY: Well, the problem is we're here</p> <p>01:55:10 11 today for a deposition in a case in which discovery</p> <p>01:55:13 12 ends --</p> <p>01:55:14 13 MR. GORMAN: No. I'm saying you can ask the</p> <p>01:55:16 14 questions right now. We just wouldn't enter the exhibit</p> <p>01:55:18 15 in until it's been properly redacted.</p> <p>01:55:22 16 MR. LOCKERBY: Well, which parts of the exhibit</p> <p>01:55:26 17 is it the position of Southern Coalition for Social</p> <p>01:55:29 18 Justice and the Protect Democracy Project that I'm not</p> <p>01:55:32 19 supposed to ask questions about?</p> <p>01:55:33 20 MR. GORMAN: There are references to an</p> <p>01:55:35 21 attorney whose first name is Alesha. That's what I see</p> <p>01:55:38 22 immediately.</p> <p>01:55:43 23 MR. LOCKERBY: On the first page it says,</p> <p>01:55:46 24 "Contacted Alesha."</p> <p>01:55:46 25 MR. GORMAN: That's right.</p>	<p>01:56:59 1 So I will say on behalf of my client that we're</p> <p>01:57:03 2 willing to accept the proffer of Mr. Gorman to allow you</p> <p>01:57:08 3 to ask questions; but we would want, then, to further</p> <p>01:57:11 4 redact the documents. I will not allow him to answer</p> <p>01:57:14 5 questions that I think implicate a question which may</p> <p>01:57:18 6 have called for an attorney-client privilege.</p> <p>01:57:20 7 But in the main, most of this document is not</p> <p>01:57:23 8 going to be affected by that, which is why you got it in</p> <p>01:57:26 9 the first place. So that's just my -- my point in</p> <p>01:57:29 10 response to Mr. Gorman's offer because he speaks for his</p> <p>01:57:32 11 clients with respect to their work product.</p> <p>01:57:34 12 MR. LOCKERBY: Rather than engaging in a</p> <p>01:57:36 13 guessing game, let me suggest that we go off the record;</p> <p>01:57:39 14 and then Mr. Gorman or whoever else needs to address</p> <p>01:57:48 15 this can look at Exhibits 32 and 33 and let me know</p> <p>01:57:53 16 which lines of these should be redacted; and I won't at</p> <p>01:57:59 17 this time ask any questions about the portions for which</p> <p>01:58:02 18 you're seeking redaction. That would be the most</p> <p>01:58:05 19 efficient way to address this. Then we can substitute</p> <p>01:58:09 20 redacted copies later.</p> <p>01:58:12 21 MR. GORMAN: So I believe I've already</p> <p>01:58:13 22 identified the references just to an individual by the</p> <p>01:58:17 23 name of Alesha.</p> <p>01:58:22 24 MR. LOCKERBY: On exhibit -- I have Exhibit 32</p> <p>01:58:25 25 in front of me. Under Raza Latif, I take it that you</p>
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<p>01:55:47 1 MR. LOCKERBY: The fact that he contacted</p> <p>01:55:48 2 Alesha is not work product.</p> <p>01:55:50 3 MR. GORMAN: The fact that he contacts Alesha</p> <p>01:55:52 4 about that particular individual is.</p> <p>01:55:54 5 MR. LOCKERBY: It doesn't say that.</p> <p>01:56:10 6 MR. BRIDGES: I think the suggestion Mr. Gorman</p> <p>01:56:12 7 proposes makes sense. You can proceed with your</p> <p>01:56:14 8 questioning.</p> <p>01:56:14 9 The only thing I would add is there is one</p> <p>01:56:17 10 sentence on here that's been identified which may</p> <p>01:56:19 11 indicate a response to an inquiry, and that we are going</p> <p>01:56:23 12 to assert attorney-client privilege to. I will not</p> <p>01:56:25 13 allow him to testify to that, and I would redact it.</p> <p>01:56:28 14 There may be others.</p> <p>01:56:29 15 But keep in mind we produced in short order</p> <p>01:56:32 16 thousands of pages of documents, and we did so with the</p> <p>01:56:35 17 intention of allowing you to ask questions until such</p> <p>01:56:39 18 time as an attorney-client question may have arisen or a</p> <p>01:56:44 19 request for legal advice, and then we brought the</p> <p>01:56:47 20 curtain down.</p> <p>01:56:48 21 So it surprises me not that there is a line or</p> <p>01:56:49 22 two in here that needs to be redacted. I assume that</p> <p>01:56:53 23 was the intention of the parties by putting a clawback</p> <p>01:56:55 24 provision in the protective order. We know what happens</p> <p>01:56:58 25 in these sort of cases.</p>	<p>01:58:35 1 want to redact the sentence that that says --</p> <p>01:58:40 2 DEPOSITION OFFICER: Do you want this on the</p> <p>01:58:41 3 record?</p> <p>01:58:42 4 MR. LOCKERBY: I was try -- suggesting to doing</p> <p>01:58:45 5 it off the record; but apparently, they want to do it</p> <p>01:58:50 6 some other way.</p> <p>01:58:50 7 MR. BRIDGES: I'm willing to go off the record</p> <p>01:58:53 8 to have this discussion.</p> <p>01:58:54 9 MR. GORMAN: I just don't think we need to.</p> <p>01:58:56 10 It's the same issue for me, for my clients, which is the</p> <p>01:58:58 11 references to an attorney named Alesha. And I believe</p> <p>01:59:00 12 there was at least some testimony about an inquiry from</p> <p>01:59:05 13 an individual where there was an attorney-client</p> <p>01:59:07 14 objection. But that's not my objection.</p> <p>01:59:10 15 MR. LOCKERBY: All right. On the first page of</p> <p>01:59:10 16 Exhibit 32, we would redact -- you're proposing to</p> <p>01:59:14 17 redact, "Gave Alesha contact info" --</p> <p>01:59:17 18 MR. GORMAN: Can we not --</p> <p>01:59:19 19 MR. LOCKERBY: -- "and contacted Alesha."</p> <p>01:59:20 20 MR. GORMAN: The point is, is that it's work</p> <p>01:59:20 21 product protected and redact it. We're not putting</p> <p>01:59:22 22 these comments on the record.</p> <p>01:59:24 23 MR. LOCKERBY: Okay. Then let's go off the</p> <p>01:59:26 24 record, and why don't you mark up Exhibits 32 and 33</p> <p>01:59:30 25 with what you claim should be redacted, and I'll ask</p>

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<p>01:59:33 1 questions about the rest of it. I suggested doing it</p> <p>01:59:36 2 off the record. You wanted to do it on the record.</p> <p>01:59:39 3 Then I did it on the record, and you wanted to do it off</p> <p>01:59:41 4 the record. So we'll go off the record, and take as</p> <p>01:59:44 5 much time as you like, and we'll come back when you're</p> <p>01:59:46 6 done.</p> <p>01:59:48 7 MR. GORMAN: That's fine with me.</p> <p>01:59:51 8 THE VIDEOGRAPHER: We're off the record at</p> <p>01:59:52 9 1:59 p.m.</p> <p>01:59:54 10 (A recess is taken.)</p> <p>02:36:48 11 THE VIDEOGRAPHER: We are back on the record at</p> <p>02:36:51 12 2:36 p.m.</p> <p>02:36:54 13 MR. LOCKERBY: While we were off the record,</p> <p>02:36:56 14 counsel for plaintiffs, counsel for plaintiff's counsel,</p> <p>02:37:03 15 and counsel for Loyola and Mr. Levitt conferred and have</p> <p>02:37:10 16 come up with redacted versions of Exhibits 32, 33, which</p> <p>02:37:15 17 we will use as the official deposition exhibits. And we</p> <p>02:37:22 18 will make sure that the originals get clawed back in</p> <p>02:37:26 19 accordance with protective order until such time as the</p> <p>02:37:29 20 Court resolves any issues about the claims of work</p> <p>02:37:34 21 product and attorney-client privilege.</p> <p>02:37:36 22 Is that -- anything else we need to say on</p> <p>02:37:39 23 that?</p> <p>02:37:40 24 MR. GORMAN: Yeah. And there was an agreement</p> <p>02:37:42 25 that to the extent any of those now redacted portions</p>	<p>02:39:24 1 with using name. Okay with describing story."</p> <p>02:39:27 2 Is that consistent with what Fabian Lopez told</p> <p>02:39:31 3 you?</p> <p>02:39:31 4 A. Yes.</p> <p>02:39:31 5 Q. And under Mary Kanani, last line before the</p> <p>02:39:40 6 redaction, she told you, "Okay with talking about</p> <p>02:39:44 7 situation but not using name"; correct?</p> <p>02:39:47 8 A. Correct.</p> <p>02:39:47 9 Q. And under Lucania Freeman, where you've</p> <p>02:39:55 10 written, "May be okay with using name but scared,"</p> <p>02:39:57 11 that's consistent with what she told you; correct?</p> <p>02:40:00 12 A. Correct.</p> <p>02:40:01 13 Q. Under Bobby Woods you've written, quote, Okay</p> <p>02:40:07 14 with using name in connection with debunking the report.</p> <p>02:40:12 15 You discussed with Mr. Woods possibly using his</p> <p>02:40:15 16 name to debunk the report; isn't that right?</p> <p>02:40:19 17 A. Yes. I don't recall who brought up debunking</p> <p>02:40:26 18 the report, but yes.</p> <p>02:40:28 19 Q. And debunking the report is a phrase that you</p> <p>02:40:33 20 use -- one, two, three -- four times in Exhibit 32;</p> <p>02:40:33 21 correct?</p> <p>02:40:41 22 A. Correct.</p> <p>02:40:42 23 Q. And similarly, under Cameron Weidenhof, you've</p> <p>02:40:48 24 written, quote, He's okay with using his name in</p> <p>02:40:51 25 connection with debunking the report, close quote.</p>
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<p>02:37:46 1 were read into the record, that the objections were</p> <p>02:37:49 2 timely asserted. It's not a waiver for them to stay on</p> <p>02:37:52 3 the transcript or on the video.</p> <p>02:37:53 4 MR. BRIDGES: So stipulated.</p> <p>02:37:55 5 MR. LOCKERBY: Agreed.</p> <p>02:37:57 6 BY MR. LOCKERBY:</p> <p>02:37:59 7 Q. If you can look back, please, at Exhibit 32</p> <p>02:38:02 8 under the name Kimone Campbell. Kimone Campbell told</p> <p>02:38:12 9 you, "Okay with using story that I made"; correct?</p> <p>02:38:15 10 A. Correct.</p> <p>02:38:15 11 Q. And if someone was not okay with having his or</p> <p>02:38:24 12 her name used, then that individual obviously cannot be</p> <p>02:38:29 13 a party to litigation; correct?</p> <p>02:38:35 14 A. So I'm not going to discuss what individuals</p> <p>02:38:39 15 thought about whether they were going to be parties to</p> <p>02:38:41 16 litigation or not. That was not the purpose for my</p> <p>02:38:44 17 making that comment in these documents, and so I don't</p> <p>02:38:49 18 think I can answer your question.</p> <p>02:38:50 19 Q. Fair enough.</p> <p>02:38:50 20 So you were talking to these individuals about</p> <p>02:38:55 21 publicizing the fact that they were, in fact, citizens?</p> <p>02:39:01 22 A. I was inquiring whether they would be willing</p> <p>02:39:06 23 to or interested in publicize that, yes.</p> <p>02:39:09 24 Q. And then similarly, on the second page of</p> <p>02:39:17 25 Exhibit 32, under Fabian Lopez you've written, "Not okay</p>	<p>02:40:54 1 That's what you wrote; correct?</p> <p>02:40:56 2 A. Correct.</p> <p>02:40:56 3 Q. And now if you could look, please, at</p> <p>02:41:07 4 Exhibit 33. And in Exhibit 33 the first three pages</p> <p>02:41:19 5 address the same voters as identified in Exhibit 32;</p> <p>02:41:28 6 isn't that right?</p> <p>02:41:30 7 A. Yes.</p> <p>02:41:36 8 MR. GORMAN: Just a point of clarification. I</p> <p>02:41:38 9 don't think that's --</p> <p>02:41:40 10 MR. LOCKERBY: They're in a different order.</p> <p>02:41:42 11 MR. GORMAN: Different order? Okay.</p> <p>02:41:44 12 BY MR. LOCKERBY:</p> <p>02:41:44 13 Q. Address the same voters; correct?</p> <p>02:41:45 14 A. Correct.</p> <p>02:41:46 15 Q. And then if you look on the fourth page, there</p> <p>02:41:51 16 are -- one, two, three, four -- five additional</p> <p>02:41:56 17 individuals that were not named in the Exhibit 32; is</p> <p>02:41:56 18 that right?</p> <p>02:42:13 19 A. Correct.</p> <p>02:42:22 20 Q. Under the name Gracia Gadju there are a series</p> <p>02:42:28 21 of questions. Was that series of questions that you</p> <p>02:42:35 22 intended to ask if you spoke with these people or in</p> <p>02:42:38 23 e-mails? What was the purpose of that series of</p> <p>02:42:41 24 questions?</p> <p>02:42:41 25 A. Yes. That's correct. This was a series of</p>

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<p>02:42:43 1 questions to ascertain the facts of what happened, to</p> <p>02:42:49 2 the best of their knowledge.</p> <p>02:42:54 3 Q. And below that series of questions, there's</p> <p>02:42:59 4 something that begins with the line, "Question from</p> <p>02:43:02 5 researcher about your name and voter registration</p> <p>02:43:06 6 report."</p> <p>02:43:07 7 Was that the subject line for an e-mail to send</p> <p>02:43:09 8 to Virginia voters?</p> <p>02:43:11 9 A. Yes.</p> <p>02:43:11 10 Q. Do you know approximately when you drafted this</p> <p>02:43:24 11 e-mail?</p> <p>02:43:27 12 A. I don't. I know that it was after speaking</p> <p>02:43:32 13 with some voters and before speaking with others, but I</p> <p>02:43:35 14 don't know further than that. I know that it was also</p> <p>02:43:41 15 after one of the individuals responsible for the report</p> <p>02:43:45 16 had been appointed to a national voting advisory body.</p> <p>02:43:49 17 So I can tell you when it's after, but I don't know</p> <p>02:43:51 18 about when it was.</p> <p>02:43:52 19 Q. In that paragraph you say, "One of the people</p> <p>02:43:59 20 responsible for the report has just been appointed to a</p> <p>02:44:02 21 national voting advisory body."</p> <p>02:44:04 22 Were you referring to Mr. Adams?</p> <p>02:44:06 23 A. I was.</p> <p>02:44:06 24 Q. And were you referring to the Presidential</p> <p>02:44:10 25 Advisory Commission on Electoral Integrity?</p>	<p>02:45:35 1 That was a false statement, wasn't it?</p> <p>02:45:39 2 A. No.</p> <p>02:45:40 3 Q. You weren't trying to track down the source of</p> <p>02:45:42 4 the incorrect information. You knew the source, didn't</p> <p>02:45:45 5 you?</p> <p>02:45:46 6 A. No.</p> <p>02:45:47 7 Q. In fact, the information regarding these</p> <p>02:45:53 8 individuals was in records that were attached as</p> <p>02:45:57 9 exhibits to the Alien Invasion reports; isn't that true?</p> <p>02:46:03 10 A. There was information about the individuals,</p> <p>02:46:08 11 yes. The incorrect information in the report was the</p> <p>02:46:14 12 information declaring that these individuals had been</p> <p>02:46:18 13 noncitizens when they registered.</p> <p>02:46:27 14 Q. So did you think that the individuals that you</p> <p>02:46:30 15 were contacting were the source of the incorrect</p> <p>02:46:32 16 information in the report?</p> <p>02:46:40 17 A. I did not know, which was why I was contacting</p> <p>02:46:42 18 them. I knew that some of the information in the report</p> <p>02:46:57 19 had been incorrect, and I did not know whether there was</p> <p>02:47:00 20 a systemic reason for that.</p> <p>02:47:02 21 Q. Well, in fact, if you wanted to find out why</p> <p>02:47:09 22 there was supposedly incorrect information in the</p> <p>02:47:12 23 report, wouldn't the best source have been either the</p> <p>02:47:15 24 state department of elections in Virginia, the local</p> <p>02:47:17 25 registrar, or the authors and publishers of the report?</p>
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<p>02:44:12 1 A. Yes.</p> <p>02:44:13 2 Q. And when was that commission established, if</p> <p>02:44:17 3 you recall?</p> <p>02:44:18 4 A. I don't recall exactly.</p> <p>02:44:19 5 Q. But whenever it was, this e-mail was drafted --</p> <p>02:44:26 6 or the text of this e-mail was drafted after the</p> <p>02:44:29 7 commission was set up?</p> <p>02:44:30 8 A. Correct.</p> <p>02:44:30 9 Q. And you also wrote, "Quite a few people have</p> <p>02:44:38 10 told me already that their information is not correct,</p> <p>02:44:40 11 and they're understandably quite upset about it."</p> <p>02:44:44 12 A. Correct.</p> <p>02:44:44 13 Q. As of the date you drafted this e-mail,</p> <p>02:44:48 14 whenever it was, how many people told you that the</p> <p>02:44:52 15 information was not correct and that they were upset?</p> <p>02:44:55 16 A. I don't recall exactly, but I -- I</p> <p>02:45:00 17 characterized that as quite a few, and I would -- I</p> <p>02:45:03 18 would stand by that.</p> <p>02:45:09 19 Q. Of the quite a few that you referenced, only</p> <p>02:45:16 20 one, Lucania Freeman, became a plaintiff in this case;</p> <p>02:45:16 21 correct?</p> <p>02:45:21 22 A. That's my understanding.</p> <p>02:45:22 23 Q. In the paragraph that begins with the word</p> <p>02:45:28 24 "specifically," you write, "I'm trying to track down the</p> <p>02:45:32 25 source of the incorrect information in the report."</p>	<p>02:47:23 1 MR. BRIDGES: Objection.</p> <p>02:47:23 2 BY MR. LOCKERBY:</p> <p>02:47:23 3 Q. Wouldn't they be the best sources?</p> <p>02:47:25 4 MR. BRIDGES: Objection. Argumentative.</p> <p>02:47:26 5 THE WITNESS: Not necessarily. They would have</p> <p>02:47:28 6 been additional sources, but not necessarily.</p> <p>02:47:32 7 BY MR. LOCKERBY:</p> <p>02:47:32 8 Q. Did you ever contact the Virginia Department of</p> <p>02:47:36 9 Elections to find out what information the department of</p> <p>02:47:40 10 elections had provided to PILF?</p> <p>02:47:44 11 A. No.</p> <p>02:47:46 12 Q. Did you ever contact any registrars in the</p> <p>02:47:49 13 Commonwealth of Virginia to find out what information</p> <p>02:47:53 14 the registrars had provided to PILF?</p> <p>02:47:55 15 A. I attempted to, yes.</p> <p>02:47:57 16 Q. What did you do to attempt to contact the</p> <p>02:48:00 17 registrars?</p> <p>02:48:01 18 A. I called the registrar's list of numbers and</p> <p>02:48:07 19 indicated that I would be interested in speaking with</p> <p>02:48:09 20 them.</p> <p>02:48:10 21 Q. Did they speak with you?</p> <p>02:48:11 22 A. I called not all of the registrars. Several</p> <p>02:48:15 23 registrars.</p> <p>02:48:15 24 Q. Which ones did you call?</p> <p>02:48:16 25 A. I don't remember precisely. I don't remember</p>

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<p>02:48:28 1 precisely.</p> <p>02:48:29 2 Q. Did you ever submit or have submitted on your</p> <p>02:48:33 3 behalf either a FOIA request or an NVRA request to any</p> <p>02:48:38 4 of the Virginia registrars?</p> <p>02:48:40 5 A. No.</p> <p>02:48:41 6 Q. And did you ever ask anyone at PILF the source</p> <p>02:48:48 7 of what you call the incorrect information in the</p> <p>02:48:51 8 report?</p> <p>02:49:01 9 A. No. I did ask why they had published incorrect</p> <p>02:49:06 10 information, but I did not ask the source of that</p> <p>02:49:10 11 incorrect information.</p> <p>02:49:26 12 Q. In the next paragraph you add a link to your</p> <p>02:49:31 13 faculty Web page at Loyola Law School; is that right?</p> <p>02:49:34 14 A. Correct.</p> <p>02:49:34 15 Q. And that was consistent with your statement a</p> <p>02:49:41 16 couple paragraphs above that, quote, I'm a law professor</p> <p>02:49:44 17 looking into the report's allegations, close quote;</p> <p>02:49:44 18 correct?</p> <p>02:49:49 19 A. Correct.</p> <p>02:49:49 20 Q. In the paragraph that begins with the words "I</p> <p>02:49:58 21 know," you go on in the third sentence to state, "But if</p> <p>02:50:01 22 the information in the report is incorrect, I'd like to</p> <p>02:50:05 23 be of assistance in making that clear and doing what I</p> <p>02:50:08 24 can to set things straight."</p> <p>02:50:12 25 What is it that -- what kind of assistance did</p>	<p>02:52:38 1 Southern Coalition for Social Justice would be putting</p> <p>02:52:40 2 out a press release mentioning the report and the fact</p> <p>02:52:43 3 that various individuals had supposedly been incorrectly</p> <p>02:52:49 4 identified as noncitizens in the reports?</p> <p>02:52:52 5 MR. LEBOWITZ: Objection. Lacks foundation.</p> <p>02:52:57 6 THE WITNESS: Yeah. I -- I don't know that I</p> <p>02:52:59 7 knew that a press release was forthcoming.</p> <p>02:53:02 8 BY MR. LOCKERBY:</p> <p>02:53:02 9 Q. But you have seen press releases put out by the</p> <p>02:53:05 10 Southern Coalition for Social Justice about this</p> <p>02:53:08 11 complaint and developments in this case, have you not?</p> <p>02:53:11 12 A. I believe so. I don't recall whether I had</p> <p>02:53:21 13 conversations with these individuals --</p> <p>02:53:25 14 Q. At the time --</p> <p>02:53:27 15 A. -- leading up to the press release.</p> <p>02:53:29 16 Q. And at the time you had the conversations with</p> <p>02:53:31 17 these individuals, did you know that the Southern</p> <p>02:53:37 18 Coalition for Social Justice was contemplating putting</p> <p>02:53:40 19 out press releases about this litigation?</p> <p>02:53:47 20 A. No.</p> <p>02:54:08 21 MR. LOCKERBY: I'd like to have this marked as</p> <p>02:54:09 22 Exhibit 34, please.</p> <p>02:54:27 23 Sorry, guys. We're back to sharing.</p> <p>02:54:27 24 ///</p> <p>02:54:27 25 ///</p>
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<p>02:50:14 1 you have in mind to make clear that there was incorrect</p> <p>02:50:17 2 information in the report?</p> <p>02:50:20 3 A. If the individual were so inclined to publicize</p> <p>02:50:30 4 the fact that the information related to the individual</p> <p>02:50:33 5 was incorrect. Beyond that, I wanted to inquire of</p> <p>02:50:53 6 individuals what they cared to do, if anything. And I</p> <p>02:51:00 7 don't know that I can speak further without violating</p> <p>02:51:03 8 either their privilege or privilege of counsel in this</p> <p>02:51:05 9 matter.</p> <p>02:51:07 10 Q. Well, if the information in the report was</p> <p>02:51:09 11 incorrect, wouldn't the best way of helping them to be</p> <p>02:51:15 12 to correct the report so that it was no longer</p> <p>02:51:19 13 incorrect?</p> <p>02:51:26 14 A. Potentially. That would not remedy the</p> <p>02:51:29 15 incorrect statements made about them and put out into</p> <p>02:51:32 16 the public. That would not fully remedy incorrect</p> <p>02:51:37 17 statements made about them and put out to the public.</p> <p>02:51:40 18 Q. When you contacted these hundreds of</p> <p>02:51:42 19 individuals in the Commonwealth of Virginia, did you</p> <p>02:51:47 20 find any who had already heard about the report and the</p> <p>02:51:50 21 references to them in the report?</p> <p>02:51:53 22 A. I -- I don't know that I agree with the</p> <p>02:51:56 23 premise. I -- I contacted hundreds, but I did not hear</p> <p>02:51:59 24 back from hundreds. I don't believe so.</p> <p>02:52:18 25 Q. Did you tell any of these individuals that the</p>	<p>02:54:27 1 (Whereupon the document referred to is marked</p> <p>02:54:27 2 by the reporter as Defense Exhibit 34 for</p> <p>02:54:30 3 identification.)</p> <p>02:54:30 4 MR. GORMAN: That's fine.</p> <p>02:54:31 5 MR. LOCKERBY: Actually, I spoke too soon.</p> <p>02:54:47 6 BY MR. LOCKERBY:</p> <p>02:54:47 7 Q. Exhibit 34 is a multipage document because it</p> <p>02:54:52 8 was produced that way. We've numbered all these</p> <p>02:54:54 9 different pages as -- because it was one PDF, as No. 12.</p> <p>02:55:02 10 And I'd like you to look first, please, at the Pages 3</p> <p>02:55:10 11 through 6 of the PDF.</p> <p>02:55:17 12 A. Okay.</p> <p>02:55:17 13 Q. And you see there is some e-mail exchanges with</p> <p>02:55:21 14 Cameron Bell?</p> <p>02:55:26 15 A. Yes.</p> <p>02:55:27 16 Q. And Cameron Bell at the time was a lawyer at</p> <p>02:55:32 17 the U.S. Department of Justice; correct?</p> <p>02:55:35 18 A. I don't know when she started.</p> <p>02:55:38 19 Q. You know at some point she was a lawyer at the</p> <p>02:55:45 20 U.S. Department of Justice?</p> <p>02:55:47 21 A. Actually, I'll respond to the earlier question.</p> <p>02:55:50 22 I know that she was not at this point.</p> <p>02:55:53 23 Q. Where was she at that point?</p> <p>02:55:54 24 A. At that point she was working for an</p> <p>02:55:57 25 organization called Demos.</p>

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<p>02:55:58 1 Q. What is Demos?</p> <p>02:55:59 2 A. It's a nonpartisan, nonprofit organization.</p> <p>02:56:08 3 Q. The subject matter of the e-mail at the top</p> <p>02:56:19 4 of -- I guess it's the third page, Tuesday, May 30,</p> <p>02:56:26 5 2017, 4:07 p.m. is "Welp."</p> <p>02:56:30 6 A. Correct.</p> <p>02:56:31 7 Q. What did you understand that to mean?</p> <p>02:56:33 8 A. I wrote it. That's an expression of dismay.</p> <p>02:56:45 9 Q. What were you expressing dismay over?</p> <p>02:56:48 10 A. I believe --</p> <p>02:57:01 11 MR. BRIDGES: Don't guess.</p> <p>02:57:02 12 THE WITNESS: Yeah. I don't know.</p> <p>02:57:05 13 BY MR. LOCKERBY:</p> <p>02:57:06 14 Q. Well, below, May 30, 2017, 3:29 p.m., Cameron</p> <p>02:57:12 15 Bell's writing, "Does this make up for the aliens voting</p> <p>02:57:17 16 report?"</p> <p>02:57:18 17 What did you understand her to be referring to</p> <p>02:57:20 18 there?</p> <p>02:57:25 19 A. I believe that's a hyperlink, and so I'd have</p> <p>02:57:28 20 to see the hyperlink to know.</p> <p>02:57:42 21 Q. On the second page of this -- of this e-mail</p> <p>02:57:45 22 chain, it says, "On Tuesday, May 30, 2017, at 10:44 a.m.</p> <p>02:57:52 23 Justin Levitt wrote: 'Condolences on the news this</p> <p>02:57:56 24 morning.'"</p> <p>02:57:58 25 What were you offering condolences on?</p>	<p>03:00:01 1 before actually receiving contact from them. I don't</p> <p>03:00:05 2 know. I told reporters at some point that I had</p> <p>03:00:08 3 contacted voters, yes. I don't know whether I had told</p> <p>03:00:11 4 them by June 1st.</p> <p>03:00:27 5 Q. Then if you could turn back, please, to the</p> <p>03:00:30 6 first two pages of -- the Exhibit 34.</p> <p>03:00:33 7 A. Uh-huh.</p> <p>03:00:35 8 Q. At the top it's an e-mail dated Monday,</p> <p>03:00:43 9 February 13, 2017, to Rick Pildes?</p> <p>03:00:48 10 A. Correct.</p> <p>03:00:49 11 Q. Who is Rick Pildes?</p> <p>03:00:51 12 A. He's a law professor at NYU School of Law.</p> <p>03:00:55 13 Q. And when you wrote, "Very much off list," what</p> <p>03:00:58 14 did you mean by that?</p> <p>03:00:59 15 A. He wrote his initial e-mail to a Listserv of</p> <p>03:01:07 16 various and sundry people interested in election law. I</p> <p>03:01:13 17 replied to him off list.</p> <p>03:01:24 18 Q. In his original e-mail there is a reference to</p> <p>03:01:30 19 an ElectionLawBlog.org. Is that the Listserv, or is it</p> <p>03:01:36 20 a different mail address?</p> <p>03:01:37 21 A. It's related to that. So the blog is a blog.</p> <p>03:01:41 22 It is publicly available. There is a related Listserv</p> <p>03:01:45 23 that receives information from the blog but also</p> <p>03:01:49 24 comments on things that are in the blog.</p> <p>03:01:51 25 Q. And does the Listserv have a name, as far as</p>
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<p>02:58:01 1 A. That's -- that's what I can't remember.</p> <p>02:58:03 2 Q. If you look at the e-mail chain that begins on</p> <p>02:58:25 3 the very next page, Thursday, June 1st, 2017, 3:50 p.m.,</p> <p>02:58:32 4 also on the subject "Welp," you've written, "Blech.</p> <p>02:58:36 5 Sadly no response to my e-mails just yet."</p> <p>02:58:40 6 The e-mails you're referring to were the</p> <p>02:58:43 7 e-mails to Virginia voters identified in the exhibits to</p> <p>02:58:49 8 the alien invasion reports; correct?</p> <p>02:58:51 9 A. Correct.</p> <p>02:58:59 10 Q. What had you told Ms. Bell about those e-mails</p> <p>02:59:02 11 as of June 1st, 2017?</p> <p>02:59:08 12 A. I believe that I had mentioned that I was</p> <p>02:59:14 13 contacting some of the voters in the report in order to</p> <p>02:59:18 14 find out whether they were correctly identified as</p> <p>02:59:25 15 noncitizens who had unlawfully registered to vote.</p> <p>02:59:29 16 Q. And other than Cameron Bell, who else had you</p> <p>02:59:34 17 told as of June 1st, 2017, that you were contacting</p> <p>02:59:38 18 various voters identified in the report?</p> <p>02:59:40 19 A. I cannot remember. I don't know.</p> <p>02:59:48 20 Q. But Ms. Bell wasn't the only person you told</p> <p>02:59:51 21 that to --</p> <p>02:59:52 22 A. Correct.</p> <p>02:59:52 23 Q. -- is that right?</p> <p>02:59:53 24 You told reporters that, too, hadn't you?</p> <p>02:59:56 25 A. I don't remember whether I had told reporters</p>	<p>03:01:54 1 you know?</p> <p>03:01:55 2 A. If it's called anything, it's called The</p> <p>03:01:58 3 Election Law Listserv. I believe there is an invitation</p> <p>03:02:04 4 on the blog to join the Listserv.</p> <p>03:02:10 5 Q. In the third paragraph you write, "I've never</p> <p>03:02:16 6 attempted to quantify the number of noncitizens on the</p> <p>03:02:20 7 rolls or those who have voted."</p> <p>03:02:24 8 That was a true statement as of February 13,</p> <p>03:02:29 9 2017; correct?</p> <p>03:02:35 10 A. Sorry. You said the third paragraph? I</p> <p>03:02:37 11 don't -- I don't --</p> <p>03:02:38 12 Q. It's the one that begins with the sentence,</p> <p>03:02:41 13 "This is one reason."</p> <p>03:02:42 14 A. Ah, yes. Sorry.</p> <p>03:02:43 15 Q. Yeah.</p> <p>03:02:44 16 A. Small paragraphs.</p> <p>03:02:46 17 Correct.</p> <p>03:02:48 18 Q. And at no time since February 13, 2017, have</p> <p>03:02:55 19 you ever attempted to quantify the number of noncitizens</p> <p>03:02:58 20 on the rolls or those who have voted; isn't that right?</p> <p>03:03:01 21 A. Correct.</p> <p>03:03:22 22 Q. In that same paragraph, at the end you wrote,</p> <p>03:03:26 23 "One place to start would be to look for registration</p> <p>03:03:29 24 forms of individuals who themselves checked the box</p> <p>03:03:35 25 saying that they were not a citizen. Clerical errors</p>

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<p>03:03:39 1 sometimes lead to registration of these individuals.</p> <p>03:03:41 2 See Page 14 here. But that's certainly a lower bound."</p> <p>03:03:45 3 Is it true that the number of individuals who</p> <p>03:03:49 4 check the box saying that they're not a citizen on a</p> <p>03:03:52 5 voter registration application would be a lower bound of</p> <p>03:03:56 6 the number of noncitizens on the roles?</p> <p>03:03:58 7 A. Yes.</p> <p>03:03:58 8 Q. In the last paragraph --</p> <p>03:04:09 9 A. I should correct myself. It is possible but</p> <p>03:04:14 10 unlikely that some of those indications were themselves</p> <p>03:04:18 11 mistakes. And so it is possible that the lower bound is</p> <p>03:04:22 12 actually lower than that number.</p> <p>03:04:27 13 Q. In the final paragraph you write that,</p> <p>03:04:30 14 "Discussions in this arena tend toward hysteria."</p> <p>03:04:37 15 What were you referring to there?</p> <p>03:04:39 16 A. Discussions in the arena of whether there</p> <p>03:04:45 17 are -- whether noncitizens register or vote and various</p> <p>03:04:51 18 discussions in -- over various years.</p> <p>03:05:03 19 Q. And you had a link to a document in the e-mail.</p> <p>03:05:05 20 Was the link to one of the alien invasion reports?</p> <p>03:05:08 21 A. I believe so.</p> <p>03:05:26 22 Q. And to the extent that the alien invasion</p> <p>03:05:29 23 reports included NVRA records or records obtained</p> <p>03:05:34 24 pursuant to the NVRA, do you know whether the redactions</p> <p>03:05:37 25 were done by state and local officials or by PILF?</p>	<p>03:06:46 1 obtained by making an NVRA request; isn't that true?</p> <p>03:06:50 2 MR. BRIDGES: Objection. Lacks foundation.</p> <p>03:06:51 3 Calls for speculation.</p> <p>03:06:52 4 THE WITNESS: To the extent that there were</p> <p>03:06:55 5 timely requests, I understand that any individual could</p> <p>03:06:59 6 have had a federal right to obtain those records and at</p> <p>03:07:01 7 the appropriate time, yes.</p> <p>03:07:18 8 MR. LOCKERBY: I'd like to have this marked as</p> <p>03:07:19 9 Exhibit 35, please.</p> <p>03:07:19 10 (Whereupon the document referred to is marked</p> <p>03:07:19 11 by the reporter as Defense Exhibit 35 for</p> <p>03:07:36 12 identification.)</p> <p>03:07:36 13 THE WITNESS: Thank you.</p> <p>03:07:49 14 BY MR. LOCKERBY:</p> <p>03:07:49 15 Q. Exhibit 35 is entitled "Fake Voter Fraud Report</p> <p>03:07:56 16 Debunked By Woman Featured in Front Page Article."</p> <p>03:08:06 17 And this is something we've numbered No. 18.</p> <p>03:08:11 18 How did this come to your attention?</p> <p>03:08:14 19 A. I don't recall.</p> <p>03:08:29 20 Q. Did you provide any information to Progress</p> <p>03:08:32 21 Virginia for use in this posting?</p> <p>03:08:37 22 A. I don't believe so.</p> <p>03:08:46 23 Q. Do you know whether the individual who is the</p> <p>03:08:50 24 subject of this article was, in fact, identified in a</p> <p>03:08:54 25 list of voters canceled due to noncitizen status</p>
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<p>03:05:42 1 A. I have no idea who performed the redactions on</p> <p>03:05:45 2 any of the documents in the report.</p> <p>03:05:46 3 Q. And you don't know whether any registrars in</p> <p>03:05:50 4 the Commonwealth of Virginia sent out reports in</p> <p>03:05:54 5 response to NVRA requests without redacting certain</p> <p>03:05:58 6 information?</p> <p>03:05:58 7 A. I don't.</p> <p>03:06:00 8 Q. So you don't know whether PILF was responsible</p> <p>03:06:03 9 for that, do you?</p> <p>03:06:05 10 MR. BRIDGES: Objection.</p> <p>03:06:06 11 MR. LEBOWITZ: Objection.</p> <p>03:06:08 12 MR. BRIDGES: Vague and ambiguous as to "that."</p> <p>03:06:11 13 THE WITNESS: And I have a further question</p> <p>03:06:12 14 about "responsible." To the extent that PILF published</p> <p>03:06:16 15 information, I hold them responsible for publishing that</p> <p>03:06:19 16 information. I don't -- I don't know who's responsible</p> <p>03:06:25 17 for what information was transmitted on what forms in</p> <p>03:06:27 18 the process.</p> <p>03:06:32 19 BY MR. LOCKERBY:</p> <p>03:06:32 20 Q. You understand that records obtained pursuant</p> <p>03:06:37 21 to the NVRA are a matter of public record; correct?</p> <p>03:06:42 22 MR. LEBOWITZ: Objection. Vague.</p> <p>03:06:43 23 THE WITNESS: Correct.</p> <p>03:06:43 24 BY MR. LOCKERBY:</p> <p>03:06:43 25 Q. Anyone could obtain the records that PILF</p>	<p>03:08:57 1 provided by the Virginia Department of Elections?</p> <p>03:09:08 2 THE WITNESS: Can I ask you to read the</p> <p>03:09:09 3 question back for me.</p> <p>03:09:10 4 (The record is read by the reporter as</p> <p>03:09:10 5 follows:</p> <p>03:08:47 6 "Q. Do you know whether the individual who is</p> <p>03:08:49 7 the subject of this article was, in fact,</p> <p>03:08:52 8 identified in a list of voters canceled due to</p> <p>03:08:56 9 noncitizen status provided by the Virginia</p> <p>03:09:00 10 Department of Elections?")</p> <p>03:09:34 11 MR. LEBOWITZ: I'll object to the form as</p> <p>03:09:35 12 lacking foundation.</p> <p>03:09:38 13 THE WITNESS: Yeah. And that was -- that was</p> <p>03:09:39 14 what was causing my hesitation, is that I know there</p> <p>03:09:44 15 have been various representations about what information</p> <p>03:09:48 16 provided that is the subject of the Alien Invasion</p> <p>03:09:53 17 report purports to show.</p> <p>03:09:55 18 I believe that Ms. Erickson [phonetic] was</p> <p>03:09:58 19 included in the list of individuals documented in that</p> <p>03:10:02 20 report. I'm going to be hesitant to characterize</p> <p>03:10:06 21 information sent by Virginia to PILF, which they</p> <p>03:10:15 22 themselves appear to have disclaimed.</p> <p>03:10:21 23 BY MR. LOCKERBY:</p> <p>03:10:21 24 Q. The "they" to which you're referring, is that</p> <p>03:10:25 25 the Virginia Department of Elections?</p>

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<p>03:10:27 1 A. Either the Virginia Department of Elections or</p> <p>03:10:32 2 one or more registrars in Virginia. Official sources.</p> <p>03:10:35 3 I confess I don't remember whether it was state</p> <p>03:10:40 4 officials or county officials.</p> <p>03:10:46 5 Q. If you could look back, please -- I think it</p> <p>03:10:52 6 should still be over there. It wasn't marked as an</p> <p>03:10:57 7 exhibit. It's PILF Adams 15467 --</p> <p>03:11:07 8 A. Yes.</p> <p>03:11:10 9 Q. -- where the commissioner of the Virginia</p> <p>03:11:15 10 Department of Elections writes, "This report shows</p> <p>03:11:17 11 individuals that were canceled due to self-reported</p> <p>03:11:22 12 noncitizen status and failed to complete an affirmation</p> <p>03:11:25 13 of citizenship in the allotted time frame and continued</p> <p>03:11:29 14 to be a canceled status. If an individual was</p> <p>03:11:32 15 previously canceled and then subsequently affirmed</p> <p>03:11:35 16 citizenship and was reregistered, they would no longer</p> <p>03:11:40 17 appear on this report because they would now be on</p> <p>03:11:43 18 active status."</p> <p>03:11:50 19 Is this an example of a disclaimer to which you</p> <p>03:11:54 20 were referring?</p> <p>03:11:55 21 A. That wasn't the disclaimer that I -- to which I</p> <p>03:11:59 22 was specifically referring, no.</p> <p>03:12:01 23 Q. Okay. Have you had communications with Anna</p> <p>03:12:16 24 Scholl of Progress Virginia?</p> <p>03:12:19 25 A. I don't believe so. It is possible that I have</p>	<p>03:16:48 1 from over here. I think it's Exhibit 6.</p> <p>03:17:06 2 A. Okay. Is that the privilege log?</p> <p>03:17:11 3 Q. Yes.</p> <p>03:17:15 4 MR. BRIDGES: Which privilege log?</p> <p>03:17:17 5 THE WITNESS: Sorry. Mine.</p> <p>03:17:45 6 BY MR. LOCKERBY:</p> <p>03:17:45 7 Q. And if you look at the last four pages of the</p> <p>03:17:55 8 privilege log --</p> <p>03:18:03 9 A. Okay.</p> <p>03:18:03 10 Q. -- and specifically -- I guess this would be</p> <p>03:18:07 11 the third one from the end. There is a -- a June 27,</p> <p>03:18:14 12 2017, e-mail exchange with Augustine Tsibu-Gyan with an</p> <p>03:18:21 13 e-mail from her to you and one from you to her. There</p> <p>03:18:32 14 were prior e-mail communications with this individual</p> <p>03:18:36 15 that have not been withheld or redacted on grounds of</p> <p>03:18:40 16 attorney-client privilege; correct?</p> <p>03:18:42 17 A. Correct.</p> <p>03:18:42 18 Q. And when is it that you contend you entered</p> <p>03:18:45 19 into an attorney-client relationship with Augustine</p> <p>03:18:50 20 Tsibu-Gyan?</p> <p>03:18:51 21 MR. BRIDGES: Objection. Misstates the record.</p> <p>03:18:54 22 Assumes facts not established. Lacks foundation.</p> <p>03:19:00 23 Subject to that and without waiving any</p> <p>03:19:03 24 attorney-client communication, you can respond to the</p> <p>03:19:05 25 question, if you can.</p>
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<p>03:12:31 1 spoken to her in some context, but I don't -- I don't</p> <p>03:14:11 2 remember.</p> <p>03:14:11 3 Q. I'd like you to look back, please, at what was</p> <p>03:14:14 4 marked as Exhibit 34 and, in particular, at the 15th</p> <p>03:14:36 5 page, which is a June 27, 2017, e-mail from you to</p> <p>03:14:46 6 Cameron Bell.</p> <p>03:14:47 7 A. Yes.</p> <p>03:15:16 8 Q. When you wrote to Cameron Bell, "I've got a few</p> <p>03:15:20 9 folks writing me back now who are emphatically</p> <p>03:15:25 10 citizens," were you telling her about the results of</p> <p>03:15:27 11 your communications with Virginia voters?</p> <p>03:15:31 12 A. Yes.</p> <p>03:15:31 13 Q. Why were you telling Ms. Bell about what these</p> <p>03:15:39 14 voters were writing back to you?</p> <p>03:15:41 15 A. She expressed interest in whether this report</p> <p>03:15:44 16 was accurate or not.</p> <p>03:15:46 17 Q. And as of June 27, 2017, who, other than</p> <p>03:15:54 18 Ms. Bell, had you told that you were hearing from voters</p> <p>03:15:59 19 identified in the reports who, in fact, were citizens?</p> <p>03:16:02 20 A. I -- I can't recall. At some point I</p> <p>03:16:06 21 publicized that. And so at some point the answer is</p> <p>03:16:11 22 whoever -- whoever happened to be listening. But I</p> <p>03:16:14 23 can't recall.</p> <p>03:16:37 24 Q. Could you look back, please, at what's been</p> <p>03:16:40 25 marked as exhibit -- of course, now it's disappeared</p>	<p>03:19:07 1 THE WITNESS: I don't know whether we have</p> <p>03:19:10 2 entered that relationship or not.</p> <p>03:19:16 3 BY MR. LOCKERBY:</p> <p>03:19:16 4 Q. So you don't know whether you ever entered into</p> <p>03:19:19 5 an attorney-client relationship with Augustine</p> <p>03:19:23 6 Tsibu-Gyan; is that right?</p> <p>03:19:29 7 A. I don't know whether one was ever established.</p> <p>03:19:31 8 That's correct.</p> <p>03:19:33 9 Q. As of June 27, 2017, had Augustine Tsibu-Gyan</p> <p>03:19:43 10 sought your advice about Virginia law?</p> <p>03:19:51 11 MR. BRIDGES: Specifically about Virginia law?</p> <p>03:19:53 12 MR. LOCKERBY: Yes.</p> <p>03:19:59 13 THE WITNESS: Are we asking as of that date or</p> <p>03:20:01 14 as of the day before that date?</p> <p>03:20:01 15 BY MR. LOCKERBY:</p> <p>03:20:11 16 Q. On or before June 27, 2017, did Augustine</p> <p>03:20:18 17 Tsibu-Gyan seek your advice about Virginia law?</p> <p>03:20:21 18 A. So if a attorney-client privilege was</p> <p>03:20:23 19 established, discussing whether or not that occurred</p> <p>03:20:28 20 might, in fact, invade the attorney-client privilege.</p> <p>03:20:31 21 And so I don't believe I can answer that without waiving</p> <p>03:20:34 22 the privilege that isn't mine to waive.</p> <p>03:20:36 23 Q. Did something happen on August 27, 2017, that</p> <p>03:20:41 24 caused you to conclude that you might have an</p> <p>03:20:45 25 attorney-client relationship with Augustine Tsibu-Gyan?</p>

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<p>03:20:48 1 A. Yes.</p> <p>03:20:48 2 Q. What happened?</p> <p>03:20:49 3 A. I cannot answer that question without invading</p> <p>03:20:52 4 the privilege that's not mine to waive.</p> <p>03:21:04 5 Q. Did you ever tell Augustine Tsibu-Gyan that you</p> <p>03:21:09 6 would be sharing things that she told you with third</p> <p>03:21:15 7 parties?</p> <p>03:21:15 8 MR. BRIDGES: Objection. Attorney-client</p> <p>03:21:17 9 privilege.</p> <p>03:21:18 10 If you can answer that without invading the</p> <p>03:21:21 11 client privilege, you may do so. Otherwise, so indicate</p> <p>03:21:24 12 and do not respond.</p> <p>03:21:25 13 THE WITNESS: Without invading the privilege on</p> <p>03:21:29 14 any date before there would have been a privilege if a</p> <p>03:21:32 15 privilege -- if a relationship was established, I did</p> <p>03:21:35 16 not. Or at least not to my knowledge.</p> <p>03:21:52 17 BY MR. LOCKERBY:</p> <p>03:21:53 18 Q. On this same privilege log there are two</p> <p>03:21:56 19 e-mails with Raza Latif dated June 27, 2017. And this</p> <p>03:22:14 20 communication with Raza Latif was the result of prior</p> <p>03:22:17 21 e-mails that you sent this individual identifying</p> <p>03:22:21 22 yourself as a law professor doing research; is that</p> <p>03:22:21 23 right?</p> <p>03:22:28 24 A. Correct.</p> <p>03:22:28 25 Q. Do you contend that you entered into an</p>	<p>03:23:52 1 Entry No. 1.</p> <p>03:24:01 2 A. Okay.</p> <p>03:24:01 3 Q. Do you see that's dated June 27, 2017?</p> <p>03:24:05 4 A. I do.</p> <p>03:24:08 5 Q. And that's an e-mail from you to Allison Riggs;</p> <p>03:24:13 6 isn't that right?</p> <p>03:24:13 7 A. It is.</p> <p>03:24:13 8 Q. And the privilege description is,</p> <p>03:24:20 9 "Communication Between Counsel Re Information Gathered</p> <p>03:24:23 10 in Investigation Into Anticipated Claims."</p> <p>03:24:27 11 That's what it says; right?</p> <p>03:24:28 12 A. That is what that says. That's correct.</p> <p>03:24:29 13 Q. And that very day you had spoken with Augustine</p> <p>03:24:36 14 Tsibu-Gyan and Raza Latif; isn't that right?</p> <p>03:24:43 15 A. That is correct.</p> <p>03:24:49 16 Q. I'd like you to look back, please, at</p> <p>03:25:00 17 Exhibit 34.</p> <p>03:25:05 18 A. Okay. Lest I put these away, will we be</p> <p>03:25:24 19 returning to the privilege log?</p> <p>03:25:26 20 Q. We will be, yes.</p> <p>03:25:28 21 MR. BRIDGES: Okay.</p> <p>03:25:29 22 BY MR. LOCKERBY:</p> <p>03:25:29 23 Q. We'll never escape the privilege log.</p> <p>03:25:45 24 Exhibit 34. If you could look, please, at</p> <p>03:25:49 25 Pages 16 through 17, which are a June 29, 2017, e-mail</p>
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<p>03:22:32 1 attorney-client relationship with Raza Latif?</p> <p>03:22:35 2 A. The same answer. I -- I don't know whether a</p> <p>03:22:39 3 relationship has been entered into or not.</p> <p>03:22:40 4 MR. BRIDGES: I'd also note for the record that</p> <p>03:22:42 5 an attorney-client relationship is not necessary to the</p> <p>03:22:46 6 invocation of the attorney-client privilege.</p> <p>03:22:49 7 BY MR. LOCKERBY:</p> <p>03:22:50 8 Q. Was Raza Latif seeking legal advice from you?</p> <p>03:22:54 9 A. Don't believe I can answer that question</p> <p>03:22:56 10 without invading the privilege. At -- at -- well, no.</p> <p>03:23:06 11 That I -- I believe I can answer.</p> <p>03:23:08 12 At some point, yes.</p> <p>03:23:09 13 Q. Did you provide legal advice to Raza Latif?</p> <p>03:23:14 14 A. That, I believe I cannot answer without --</p> <p>03:23:17 15 MR. BRIDGES: Yes. You should not respond to</p> <p>03:23:19 16 that question.</p> <p>03:23:20 17 Objection. Attorney-client privilege.</p> <p>03:23:21 18 BY MR. LOCKERBY:</p> <p>03:23:21 19 Q. And, in fact, you shared with Allison Riggs</p> <p>03:23:28 20 what Raza Latif and Augustine Tsibu-Gyan told you that</p> <p>03:23:38 21 same day, June 27, 2017; isn't that right?</p> <p>03:23:42 22 A. That is not a question I can answer without</p> <p>03:23:44 23 waiving two privileges to which I am not entitled to</p> <p>03:23:49 24 waive.</p> <p>03:23:49 25 Q. Well, if you could look, please, at Exhibit 5,</p>	<p>03:25:59 1 exchange between you and Cameron Bell.</p> <p>03:26:03 2 A. Okay.</p> <p>03:26:12 3 MR. BRIDGES: What's the date of the exchange</p> <p>03:26:14 4 that you're referring to?</p> <p>03:26:15 5 MR. LOCKERBY: June 29, 2017.</p> <p>03:26:17 6 MR. BRIDGES: Okay.</p> <p>03:26:34 7 BY MR. LOCKERBY:</p> <p>03:26:35 8 Q. And you see on -- down below there's the</p> <p>03:26:41 9 June 27, 2017, e-mail from you to Cameron Bell that we</p> <p>03:26:47 10 looked at earlier. And then above that, on June 29,</p> <p>03:26:57 11 2017, 6:40 p.m., she writes -- after the first sentence,</p> <p>03:27:03 12 she writes, "Interesting. Do they want to sue? A</p> <p>03:27:08 13 certain lawyer who has a different defamation/challenge</p> <p>03:27:14 14 case said we should co-counsel again before I leave for</p> <p>03:27:17 15 DOJ. Of course, this could ruin my life goal of never</p> <p>03:27:21 16 being in a state court; and Allison specifically said</p> <p>03:27:24 17 she never wanted to work opposing PILF people again</p> <p>03:27:27 18 (understandably), so there's that."</p> <p>03:27:32 19 And then right above that you've responded, on</p> <p>03:27:37 20 June 29, 2017, 11:52 p.m., "Already talked to Allison</p> <p>03:27:43 21 about it."</p> <p>03:27:45 22 What did you talk to Allison Riggs at that</p> <p>03:27:48 23 point that you were telling Cameron Bell about?</p> <p>03:27:51 24 A. I cannot answer that question without waiving a</p> <p>03:27:55 25 privilege that's not mine to waive.</p>

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<p>03:27:57 1 Q. Did you ever have any oral conversations with 03:28:00 2 Cameron Bell -- 03:28:02 3 A. Yes. 03:28:03 4 Q. -- around this time? 03:28:04 5 A. I don't -- I don't recall. I don't know. 03:28:14 6 Q. And when Cameron Bell said, "A certain lawyer 03:28:17 7 who has a different defamation/challenge case said we 03:28:23 8 should co-counsel again before I leave for DOJ," who was 03:28:26 9 the certain lawyer to whom you understood her to be 03:28:28 10 referring? 03:28:29 11 A. I understood her to be referring to Allison 03:28:37 12 Riggs. 03:28:37 13 Q. And then Cameron Bell goes on to write, "And 03:28:40 14 Allison specifically said she never wanted to work 03:28:44 15 opposing PILF people again (understandably), so there's 03:28:49 16 that." 03:28:52 17 Did you understand what Cameron Bell was 03:28:56 18 referring to there about Allison Riggs not wanting to 03:28:59 19 work opposing PILF people again? 03:29:01 20 A. I -- I understood her to be saying exactly 03:29:04 21 that. 03:29:07 22 Q. Did you have any independent understanding as 03:29:10 23 to why Ms. Riggs didn't want to work opposing PILF 03:29:14 24 people? 03:29:14 25 A. No.</p>	<p>03:32:20 1 and created one," said Justin Levitt, a professor at 03:32:25 2 Loyola University School of Law and former Department of 03:32:29 3 Justice civil rights official. "This is asking to 03:32:31 4 create a national voter file in two weeks." 03:32:40 5 Were you correctly quoted in this article? 03:32:43 6 A. My affiliation is not quite accurate, but 03:32:46 7 this -- I can't recall exactly what I said, but this 03:32:49 8 sounds like an accurate quote. 03:32:51 9 Q. Did you object to the creation of a national 03:33:01 10 voter file or simply the speed with which this 03:33:04 11 presidential commission was seeking to do it? 03:33:07 12 MR. BRIDGES: Objection. 03:33:08 13 Are you asking if that's what he said, or are 03:33:10 14 you asking him now? 03:33:11 15 MR. LOCKERBY: I'm asking him a different 03:33:13 16 question. What he said speaks for itself. 03:33:17 17 MR. BRIDGES: You said, "Did"; so I understood 03:33:20 18 you to be talking in the past tense. 03:33:23 19 BY MR. LOCKERBY: 03:33:23 20 Q. At the time did you object to the creation of a 03:33:28 21 national voter file or the speed with which the 03:33:31 22 presidential commission would be setting it up? 03:33:33 23 A. I have had -- still have -- reservations about 03:33:40 24 creating a national voter file. I don't know that those 03:33:44 25 reservations couldn't be overcome in the right</p>
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<p>03:29:15 1 Q. No? 03:30:37 2 MR. BRIDGES: Usually, when the last box comes 03:30:40 3 off a chair, it's a good thing. 03:30:42 4 MR. LOCKERBY: It's not. It means nothing. 03:30:45 5 We're going back and forth. 03:30:47 6 And what's the next exhibit number? 03:30:50 7 DEPOSITION OFFICER: Thirty-six. 03:30:50 8 MR. LOCKERBY: I'd like to have this marked as 03:30:52 9 Exhibit 36, please. 03:30:52 10 (Whereupon the document referred to is marked 03:30:52 11 by the reporter as Defense Exhibit 36 for 03:31:07 12 identification.) 03:31:07 13 THE WITNESS: Thank you. 03:31:16 14 BY MR. LOCKERBY: 03:31:16 15 Q. Exhibit 36 is a June 29, 2017, ProPublica 03:31:23 16 article, "Presidential Commission Demands Massive 03:31:27 17 Amounts of State Voter Data." 03:31:28 18 Have you seen this before? 03:31:29 19 A. Yes. 03:31:30 20 Q. And, in fact, you're quoted in here; right? 03:31:32 21 A. I believe that I am. 03:31:33 22 Q. I'd like you to look, please, at the second 03:32:08 23 page, where you're quoted as saying, "'You'd think there 03:32:13 24 would want to be a lot of thought behind security and 03:32:16 25 access protocols for a national voter file before you up</p>	<p>03:33:47 1 circumstances. I objected to the speed, the context, 03:33:54 2 the lack of security protocols, and other aspects of 03:34:00 3 creating this file at that time, yes. 03:34:04 4 Q. It's now been almost two years, so at this 03:34:09 5 point would it -- would you still object to creating a 03:34:13 6 national voter file? And if so, why? 03:34:17 7 A. I -- I don't actually see what the two-year 03:34:24 8 window between then and now is. I would want there to 03:34:27 9 be a lot of thought put in once the decision was made to 03:34:30 10 go ahead with respect to how, before it was implemented. 03:34:34 11 So starting ten years from now and taking two weeks to 03:34:39 12 do it, I would have exactly the same reservations. 03:34:46 13 I'll give the same answer. I have some 03:34:49 14 reservations about creating a national voter file. I 03:34:51 15 don't know that those reservations couldn't be overcome 03:34:54 16 with the right care and in the right circumstances. 03:34:57 17 I -- I don't have a public position on whether I think a 03:35:00 18 national voter file in the abstract is a good idea or a 03:35:04 19 bad idea. 03:35:12 20 For that matter, I don't have a private 03:35:14 21 position whether a national voter file in the abstract 03:35:18 22 is a good idea or a bad idea. 03:35:20 23 Q. You saved yourself one question. 03:35:24 24 If a decision had been made back in June of 03:35:32 25 2017 to establish a national voter file and if the</p>

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<p>03:35:38 1 federal government followed through on that, how long do</p> <p>03:35:42 2 you think that process should take?</p> <p>03:35:49 3 A. There is an awful lot baked into "should." And</p> <p>03:35:52 4 if it were pulled together in an inapposite context or</p> <p>03:36:00 5 without the right security procedures, then my answer is</p> <p>03:36:02 6 it should not happen.</p> <p>03:36:06 7 I don't have an opinion on if you could</p> <p>03:36:08 8 overcome my reservations to the creation of one, how</p> <p>03:36:13 9 long it would take to construct that adequately. That</p> <p>03:36:23 10 would depend on a lot of other contextual factors that</p> <p>03:36:27 11 just require me to speculate.</p> <p>03:36:28 12 Q. What are your reservations about creating a</p> <p>03:36:33 13 national voter file?</p> <p>03:36:34 14 A. I would have reservations about the security of</p> <p>03:36:38 15 the file. I would have reservations about related the</p> <p>03:36:43 16 ease of tampering with the voter file. I'd have</p> <p>03:36:52 17 reservations about the extent to which those security</p> <p>03:36:56 18 concerns actually facilitated local changes in the</p> <p>03:37:00 19 national voter file; that is, if there were one national</p> <p>03:37:11 20 voter file, I don't know how often it would be updated</p> <p>03:37:13 21 or renewed and whether having a national voter file with</p> <p>03:37:17 22 all of the security concerns that would entail would</p> <p>03:37:21 23 limit local updates.</p> <p>03:37:29 24 Q. When you referenced an inapposite --</p> <p>03:37:29 25 A. I don't --</p>	<p>03:39:10 1 know whether I had concerns about them at this point. I</p> <p>03:39:14 2 had concerns that the commission was not set up in a way</p> <p>03:39:16 3 that was bipartisan or consistent with the Federal</p> <p>03:39:22 4 Advisory Committee Act.</p> <p>03:39:24 5 And so independent of the particular personnel,</p> <p>03:39:30 6 I did not think the composition of the commission led to</p> <p>03:39:34 7 its producing a trustable report. I don't recall if</p> <p>03:39:42 8 there were others on the commission who -- I don't</p> <p>03:39:46 9 recall the timeline of who was appointed to the</p> <p>03:39:48 10 commission when, and so I don't recall if there were</p> <p>03:39:51 11 others on the commission that would have given me pause</p> <p>03:39:53 12 at this point.</p> <p>03:39:53 13 Q. At some point Christian Adams was appointed to</p> <p>03:39:57 14 the commission?</p> <p>03:39:58 15 A. Correct.</p> <p>03:39:58 16 Q. And that concerns you, did it not?</p> <p>03:40:00 17 A. In this context, it did.</p> <p>03:40:02 18 Q. And at some point Hans von Spakovsky was</p> <p>03:40:06 19 appointed to the position; and that concerns you too,</p> <p>03:40:08 20 didn't it?</p> <p>03:40:09 21 A. In this context, it did.</p> <p>03:40:10 22 Q. And at some point Kenneth Blackwell was</p> <p>03:40:13 23 appointed to the commission; is that right?</p> <p>03:40:15 24 A. Yes.</p> <p>03:40:15 25 Q. And that concerned you too?</p>
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<p>03:37:32 1 Q. I'm sorry. I didn't mean to cut you off.</p> <p>03:37:34 2 A. I'm happy to go on to the next question.</p> <p>03:37:36 3 I -- I don't know that I've exhausted my</p> <p>03:37:37 4 concerns with one of -- the policy question I've not</p> <p>03:37:41 5 thought a lot about.</p> <p>03:37:42 6 Q. When you referenced an inapposite context for</p> <p>03:37:49 7 creating a national voter file, what did you mean by</p> <p>03:37:53 8 "an inapposite context"?</p> <p>03:37:56 9 A. I did not have great confidence that a file</p> <p>03:38:00 10 constructed by this incarnation of the Presidential</p> <p>03:38:04 11 Advisory Commission would be using the voter file to</p> <p>03:38:09 12 acquire, analyze, or release data that was accurate.</p> <p>03:38:16 13 Q. So was your concern about the people who were</p> <p>03:38:19 14 on the commission?</p> <p>03:38:20 15 A. And the procedures that the -- people who were</p> <p>03:38:24 16 on the commission, some of the mission statements of the</p> <p>03:38:32 17 commission, and the procedures that the commission had</p> <p>03:38:34 18 used to go forward to date.</p> <p>03:38:36 19 Q. And specifically whom were you concerned about</p> <p>03:38:40 20 who was on the commission?</p> <p>03:38:42 21 A. I don't recall all of the commissioners. I had</p> <p>03:38:46 22 concerns about the -- the reliability and accuracy of</p> <p>03:38:52 23 analysis by the chair -- the co-chair, Mr. Kobach. I</p> <p>03:39:00 24 don't recall at this point whether Mr. von Spakovsky or</p> <p>03:39:07 25 Mr. Adams were on the commission. So I honestly don't</p>	<p>03:40:18 1 A. Differently. And I don't know whether I would</p> <p>03:40:27 2 be concerned by Secretary Blackwell in the abstract.</p> <p>03:40:32 3 Q. What concerns did you have about Secretary</p> <p>03:40:35 4 Blackwell being on the commission?</p> <p>03:40:38 5 MR. BRIDGES: Objection. Misstates his</p> <p>03:40:40 6 testimony.</p> <p>03:40:41 7 You may answer.</p> <p>03:40:42 8 THE WITNESS: Yeah. I don't -- to be clear, I</p> <p>03:40:45 9 don't know that my concerns -- I don't know that I would</p> <p>03:40:49 10 have been concerned about him on the commission in the</p> <p>03:40:53 11 abstract. In conjunction with the other appointments to</p> <p>03:40:56 12 the commission and in the context of the procedures the</p> <p>03:41:02 13 commission was undertaking and the nature of its</p> <p>03:41:06 14 appointment, I had concern that he would be promoting</p> <p>03:41:17 15 some policies with which I disagreed.</p> <p>03:41:22 16 BY MR. LOCKERBY:</p> <p>03:41:23 17 Q. What policies were you concerned that Kenneth</p> <p>03:41:27 18 Blackwell might promote with which you would disagree?</p> <p>03:41:30 19 A. I don't know that I had -- I don't know that</p> <p>03:41:35 20 there were specific instances that I was particularly</p> <p>03:41:38 21 afraid of. I know that he had taken positions in the</p> <p>03:41:44 22 past -- pardon me -- some I agreed with, but some that I</p> <p>03:41:48 23 emphatically did not agree with.</p> <p>03:41:50 24 There was one instance in which he later</p> <p>03:41:54 25 reversed course but determined to reject voter</p>

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<p>03:41:57 1 registration forms submitted on a certain paper weight</p> <p>03:42:00 2 that I thought had the risk of disenfranchising voters</p> <p>03:42:04 3 who had submitted those registration forms. That, to</p> <p>03:42:12 4 me, indicated an orientation toward administration that</p> <p>03:42:16 5 was not always concerned with the rights of eligible</p> <p>03:42:19 6 voters. And again, in this particular context, I</p> <p>03:42:24 7 thought the commission might give more voice to those</p> <p>03:42:30 8 inclinations.</p> <p>03:42:39 9 MR. LOCKERBY: I'd like to have this marked as</p> <p>03:42:41 10 Exhibit 37, please.</p> <p>03:42:41 11 (Whereupon the document referred to is marked</p> <p>03:42:41 12 by the reporter as Defense Exhibit 37 for</p> <p>03:42:59 13 identification.)</p> <p>03:42:59 14 THE WITNESS: Thank you.</p> <p>03:43:05 15 BY MR. LOCKERBY:</p> <p>03:43:06 16 Q. Exhibit 37 is an article dated July 6, 2017,</p> <p>03:43:16 17 from Vice News.</p> <p>03:43:17 18 Are you familiar with that publication?</p> <p>03:43:18 19 A. I am.</p> <p>03:43:20 20 Q. And the headline is "Trump's Voter Fraud Task</p> <p>03:43:25 21 Force May Have Broken 2 Federal Laws."</p> <p>03:43:29 22 And you see that you're quoted in here?</p> <p>03:43:31 23 A. I am. That -- it was not a question. I am,</p> <p>03:43:36 24 period.</p> <p>03:43:50 25 Q. And on the second page you're quoted as -- or</p>	<p>03:45:36 1 Q. And are there statutes that authorize</p> <p>03:45:41 2 maintaining records of individuals' voting history?</p> <p>03:45:46 3 A. The Privacy Act authorizes federal government</p> <p>03:45:50 4 maintaining voting records of individuals' voting</p> <p>03:45:53 5 history, again, under certain circumstances, yes.</p> <p>03:46:05 6 Q. There is also a reference in this article to</p> <p>03:46:10 7 the Paperwork Reduction Act. Is that a statute that you</p> <p>03:46:14 8 discussed with the reporter who drafted this article?</p> <p>03:46:17 9 A. I believe so, yes. I will point out the</p> <p>03:46:39 10 article seems to be -- the printout seems to be missing</p> <p>03:46:43 11 some content.</p> <p>03:46:44 12 MR. LOCKERBY: It does seem to be. You're</p> <p>03:46:46 13 right. Thank you.</p> <p>03:46:58 14 I'd like to have this marked as Exhibit 38,</p> <p>03:47:49 15 please.</p> <p>03:47:49 16 (Whereupon the document referred to is marked</p> <p>03:47:49 17 by the reporter as Defense Exhibit 38 for</p> <p>03:48:05 18 identification.)</p> <p>03:48:05 19 THE WITNESS: Thank you.</p> <p>03:48:11 20 BY MR. LOCKERBY:</p> <p>03:48:11 21 Q. Exhibit 38 is a document -- multipage document</p> <p>03:48:15 22 produced by you. Again, since it was a single PDF,</p> <p>03:48:19 23 we've identified it with one number, 33. And I'd like</p> <p>03:48:25 24 you to look, please, at Page 24 of the PDF. It includes</p> <p>03:48:34 25 some Tweets by you on July 10, 2017.</p>
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<p>03:43:56 1 paraphrased, at least, as explaining that the Federal</p> <p>03:44:01 2 Privacy Act prohibits the federal government from</p> <p>03:44:03 3 collecting records of individuals' party affiliation or</p> <p>03:44:07 4 voting history.</p> <p>03:44:11 5 Is that a statement you had made to the author</p> <p>03:44:13 6 of this article?</p> <p>03:44:14 7 A. That's a summary. I think it is an -- the</p> <p>03:44:30 8 quote actually accurately reflects what the Privacy Act</p> <p>03:44:33 9 states -- the quote on the next sentence. And so I</p> <p>03:44:36 10 don't think that the Privacy Act prohibits the federal</p> <p>03:44:41 11 government from collecting such records. I think that</p> <p>03:44:43 12 it prohibits them from maintaining a record describing</p> <p>03:44:48 13 how an individual exercises rights guaranteed by the</p> <p>03:44:51 14 First Amendment unless expressly authorized by statute</p> <p>03:44:54 15 or by the individual about whom the record is maintained</p> <p>03:44:57 16 or unless pertinent to and within the scope of an</p> <p>03:44:59 17 authorized law enforcement activity.</p> <p>03:45:01 18 So the first sentence is, as is common in news</p> <p>03:45:05 19 reports, a summary that does not contain all of the</p> <p>03:45:10 20 caveats in the actual law.</p> <p>03:45:13 21 Q. Are the -- are there statutes that authorize</p> <p>03:45:17 22 maintaining records of individuals' party affiliation?</p> <p>03:45:24 23 A. The Privacy Act allows the federal government</p> <p>03:45:29 24 to maintain records of individuals' party affiliation in</p> <p>03:45:35 25 certain circumstances.</p>	<p>03:48:46 1 MR. LEBOWITZ: I'm sorry.</p> <p>03:48:47 2 THE WITNESS: Okay.</p> <p>03:48:47 3 MR. LEBOWITZ: Which page did you say?</p> <p>03:48:50 4 MR. LOCKERBY: Well, the pages are not</p> <p>03:48:51 5 numbered.</p> <p>03:48:52 6 MR. LEBOWITZ: I know, but --</p> <p>03:48:53 7 MR. LOCKERBY: It should be the 24th page.</p> <p>03:48:56 8 MR. LEBOWITZ: Twenty-fourth.</p> <p>03:49:39 9 BY MR. LOCKERBY:</p> <p>03:49:39 10 Q. Have you found it?</p> <p>03:49:40 11 A. I did. I think so.</p> <p>03:49:51 12 Q. And you see there is a Tweet by you -- well,</p> <p>03:49:59 13 first of all, right above that, it says, "Breaking:</p> <p>03:50:05 14 Trump names two new people, J. Christian Adams of</p> <p>03:50:11 15 Virginia and Alan Lamar King of Alabama, to the Election</p> <p>03:50:15 16 Integrity Commission."</p> <p>03:50:17 17 Do you see that?</p> <p>03:50:17 18 A. I do.</p> <p>03:50:18 19 Q. And below that you've written, JCA is prez/GC</p> <p>03:50:21 20 of organization publishing claims (knowing they're</p> <p>03:50:24 21 unreliable) that individuals (with names, home address,</p> <p>03:50:27 22 phone) committed felonies.</p> <p>03:50:31 23 What was the factual basis for your statement</p> <p>03:50:35 24 that Mr. Adams had published claims knowing that they</p> <p>03:50:40 25 were unreliable?</p>

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<p>03:50:41 1 A. A -- at least one -- I honestly can't remember 03:50:49 2 whether there was more than one. There may have been 03:50:51 3 more than one -- document attached to the Alien Invasion 03:50:56 4 report. I believe -- if there were two, they were both 03:51:04 5 from local registrars. I believe at least one was from 03:51:07 6 the local registrar -- indicated that the information 03:51:13 7 that Mr. Adams had received did not say what he 03:51:17 8 apparently thought that it said, pointing out from the 03:51:27 9 record holder -- from the official holder of the records 03:51:31 10 that the records might not have, in fact, identified 03:51:36 11 noncitizens. And the fact that these letters or e-mails 03:51:44 12 were attached to the report meant that the organization, 03:51:48 13 the PILF that had produced the report, had seen and read 03:51:52 14 the letters. 03:51:54 15 Q. And what you just stated was your 03:51:58 16 characterization of what a local registrar said; right? 03:52:00 17 A. That's correct. 03:52:01 18 Q. And whatever the registrar said is reflective 03:52:03 19 in what the registrar said? 03:52:05 20 A. Also correct. 03:52:07 21 Q. And you were not referring to the e-mail from 03:52:12 22 the Virginia Commissioner of Elections that we've looked 03:52:15 23 at earlier in this deposition; correct? 03:52:17 24 A. Correct. 03:52:17 25 Q. Down below there is another Tweet by you that</p>	<p>03:54:32 1 Q. Was the e-mail from Mr. Hasen at 5:48 p.m. in 03:55:04 2 response to Tweets that you had sent previously about 03:55:08 3 having spoken with people identified in the Alien 03:55:12 4 Invasion reports? 03:55:12 5 A. I believe so. 03:55:14 6 Q. And when he said, "I'd love an ELB post," did 03:55:19 7 you understand him to be referring to Election Law Blog 03:55:24 8 post? 03:55:24 9 A. I did. 03:55:24 10 Q. And up above, at 5:57 p.m., you've written, "I 03:55:40 11 can't give any individual information just yet on the 03:55:43 12 individuals I've heard from, which is why I haven't 03:55:46 13 posted on it before." 03:55:50 14 What was it that prompted you to mention it on 03:55:55 15 July 10, 2017? 03:55:58 16 A. I believe it was Mr. Adams' appointment to a 03:56:02 17 prominent national commission to investigate, among 03:56:06 18 other things, the extent of voter fraud. 03:56:10 19 Q. And then later that evening you agreed that you 03:56:15 20 would post something about the fact that you had spoken 03:56:18 21 with individuals identified in the Alien Invasion 03:56:23 22 report; isn't that right? 03:56:38 23 A. Yes. 03:56:40 24 Q. And that would include the July 10, 2017, 03:56:45 25 e-mail at 6:13 p.m. from you to Mr. Hasen?</p>
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<p>03:52:35 1 says, "I've spoken to several of the people named. 03:52:39 2 They're citizens and really upset." 03:52:42 3 Were those the people identified in Exhibits 32 03:52:46 4 and 33 previously? 03:52:50 5 A. Yes. 03:52:50 6 Q. Are these Tweets by you -- or were they at the 03:53:09 7 time -- publicly accessible to anyone who wanted to look 03:53:12 8 at them? 03:53:13 9 A. Yes. 03:53:13 10 Q. I'd like you to look, please, at -- back at 03:53:47 11 Exhibit 34. 03:53:48 12 A. Okay. 03:53:48 13 Q. And, in particular, the July 10 and July 11, 03:53:57 14 2017, e-mail exchanges with Rick Hasen. 03:54:02 15 A. Happen to have page numbers? They're 03:54:06 16 consecutive, aren't they? 03:54:08 17 Q. They're not numbered, is the problem. 03:54:10 18 A. Right. 03:54:10 19 Q. By my count -- and this was derived from the 03:54:15 20 PDF, so it was easier. It starts on Page 18. 03:54:18 21 A. I think I found a string. It starts with 03:54:22 22 5:57 p.m. -- or at least the top e-mail on the page is 03:54:26 23 at 5:57 p.m. That might help identify. 03:54:29 24 Q. Yes, that is it. 03:54:31 25 A. Okay.</p>	<p>03:56:50 1 A. That suggests that I'm -- I'm going to hope to 03:56:54 2 type up a blog later. I -- I have lots of aspirations, 03:57:00 3 so that's why I was turning the pages to see whether I 03:57:02 4 had actually done so. 03:57:03 5 Q. And if you turn the pages and look at the 03:57:06 6 10:42 p.m. e-mail from you to Mr. Hasen, you lived up to 03:57:11 7 your aspiration and sent him something that evening; 03:57:15 8 isn't that right? 03:57:15 9 A. Correct. 03:57:16 10 Q. And then on July 11, 2017, 7:11 a.m., the very 03:57:38 11 next morning, you were exchanging e-mails with Mr. Hasen 03:57:42 12 about the possibility of putting something like this on 03:57:47 13 Slate. Do you see that? 03:57:48 14 A. I do. 03:58:19 15 Q. And if you turn the page to Tuesday, July 11, 03:58:25 16 2017, 9:45 a.m., you're sending e-mails to Josh Levin 03:58:27 17 and Jeremy Stahl. Who are they? 03:58:29 18 A. They are -- at least one of them is an editor 03:58:32 19 at Slate -- or was at the time. I confess that I don't 03:58:38 20 know the -- the other one was working at Slate. I don't 03:58:41 21 know the title. 03:58:42 22 Q. And then if you look at the 10:27 a.m. e-mail 03:59:15 23 that same day, Tuesday, July 11, 2017, Mr. Levin at 03:59:20 24 Slate is sending you back some proposed edits to your 03:59:25 25 posting; isn't that right?</p>

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<p>03:59:26 1 A. Correct.</p> <p>03:59:27 2 Q. And then you respond to him on Tuesday,</p> <p>03:59:37 3 July 11, 2017, at 10:30 a.m.; is that right?</p> <p>03:59:42 4 A. 10:38, I believe.</p> <p>03:59:43 5 Q. 10:38 a.m., yes.</p> <p>03:59:46 6 A. Yes.</p> <p>03:59:46 7 Q. And you've written back in numbered</p> <p>03:59:57 8 Paragraph 1, "You're right that the paragraph on the</p> <p>04:00:01 9 actual flag and cancel process is squirrely, and that's</p> <p>04:00:06 10 because I'm only interpreting from the letter cited in</p> <p>04:00:10 11 the piece itself."</p> <p>04:00:11 12 What did you mean by that?</p> <p>04:00:12 13 A. I meant that I did not want to go into great</p> <p>04:00:17 14 detail on characterizing the process by which</p> <p>04:00:21 15 individuals are flagged for noncitizenship and then</p> <p>04:00:26 16 removed from the rolls if they don't respond because I</p> <p>04:00:30 17 wanted to confirm that process with the registrar. I</p> <p>04:00:35 18 was -- I interpreted how that process worked from --</p> <p>04:00:40 19 from one of the letters mentioned as an attachment to</p> <p>04:00:44 20 the report. And so I was less particular with details</p> <p>04:00:49 21 in that particular section of the post than I might be</p> <p>04:00:52 22 otherwise.</p> <p>04:00:53 23 Q. And as of July 11, 2017, you've never -- or you</p> <p>04:01:00 24 hadn't confirmed with the registrar how that process</p> <p>04:01:04 25 worked?</p>	<p>04:02:40 1 A. Correct.</p> <p>04:02:41 2 Q. And then --</p> <p>04:02:42 3 A. The "et cetera" is meaningful, but yes.</p> <p>04:02:44 4 Q. You think it's meaningful that part of his</p> <p>04:02:51 5 motif is unwarranted character assassination of others,</p> <p>04:02:56 6 so I'd really rather let the facts speak for themselves.</p> <p>04:03:00 7 Is that what you're talking about?</p> <p>04:03:01 8 A. Correct.</p> <p>04:03:01 9 Q. And so you don't think it's character</p> <p>04:03:04 10 assassination to say that Mr. Adams published these</p> <p>04:03:08 11 reports knowing that there were inaccurate or incorrect?</p> <p>04:03:16 12 A. I said that he published the reports knowing</p> <p>04:03:18 13 they were unreliable.</p> <p>04:03:20 14 Q. Yeah.</p> <p>04:03:21 15 A. And that the reports were, in fact, inaccurate</p> <p>04:03:23 16 or incorrect.</p> <p>04:03:24 17 Q. And were you worried about claims for</p> <p>04:03:27 18 defamation when you said that publicly?</p> <p>04:03:29 19 A. No. I believe that to be true.</p> <p>04:03:31 20 Q. So because you believe it to be true, that</p> <p>04:03:34 21 means it is true?</p> <p>04:03:35 22 MR. BRIDGES: Objection. Argumentative. And</p> <p>04:03:40 23 assumes facts not established. And misstates his</p> <p>04:03:43 24 testimony.</p> <p>04:03:44 25 You may answer again, if you have a different</p>
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<p>04:01:04 1 A. Correct.</p> <p>04:01:05 2 Q. And as of today, April 17, 2019, you haven't</p> <p>04:01:10 3 confirmed with the registrar who sent that e-mail how</p> <p>04:01:14 4 the process works?</p> <p>04:01:15 5 A. Correct.</p> <p>04:01:16 6 Q. In Paragraph 2 you write, "You're also entirely</p> <p>04:01:31 7 right that the specific stories of the individual would</p> <p>04:01:34 8 make the piece much more powerful. I've spoken with</p> <p>04:01:37 9 them; but while I've got authorization to mention their</p> <p>04:01:40 10 situations generically, I don't yet have authorization</p> <p>04:01:44 11 to tell their stories; and so I can't elaborate further</p> <p>04:01:49 12 just yet."</p> <p>04:01:51 13 Which individuals were you referring to as of</p> <p>04:01:55 14 July 11, 2017?</p> <p>04:01:57 15 A. Several individuals who were identified in the</p> <p>04:02:04 16 Alien Invasion report whom I had contacted who were</p> <p>04:02:09 17 falsely identified as noncitizens when they registered</p> <p>04:02:14 18 to vote. I don't know that I know exactly which</p> <p>04:02:17 19 individuals but individuals with whom I had spoken who</p> <p>04:02:20 20 were not noncitizens when they registered.</p> <p>04:02:29 21 Q. And then in the third paragraph, you wrote in</p> <p>04:02:31 22 the opening graph, "I'm loath to characterize Adams more</p> <p>04:02:35 23 generally. There is no love lost between us,"</p> <p>04:02:38 24 et cetera.</p> <p>04:02:38 25 That's what you write.</p>	<p>04:03:47 1 answer.</p> <p>04:03:49 2 THE WITNESS: Can I hear the question again.</p> <p>04:03:50 3 (The record is read by the reporter as</p> <p>04:03:50 4 follows:</p> <p>04:03:51 5 "Q. So because you believe it to be true, that</p> <p>04:03:54 6 means it is true?")</p> <p>04:03:59 7 THE WITNESS: No.</p> <p>04:04:01 8 BY MR. LOCKERBY:</p> <p>04:04:02 9 Q. Then if you look at the July 11, 2017, e-mail,</p> <p>04:04:07 10 11:54 a.m., from you to Josh Levin --</p> <p>04:04:15 11 A. Okay.</p> <p>04:04:15 12 Q. -- he had written you back saying, "I'm less</p> <p>04:04:18 13 concerned about 3. If we can get to where I want to get</p> <p>04:04:22 14 on 1 and 2, then I'd be happy to run the piece.</p> <p>04:04:26 15 Thanks."</p> <p>04:04:26 16 You wrote back, "Got it. Okay. If 1 and 2 are</p> <p>04:04:30 17 understandably the crux of the matter, I think it's</p> <p>04:04:32 18 better to hold off for now. If I can get more clarity</p> <p>04:04:35 19 on either end, I'll happily resubmit. Thanks again for</p> <p>04:04:39 20 the time."</p> <p>04:04:39 21 You see that?</p> <p>04:04:40 22 A. Yes.</p> <p>04:04:40 23 Q. And you never were able to resolve Items 1 and</p> <p>04:04:50 24 2 below, were you?</p> <p>04:04:51 25 A. Correct.</p>

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<p>04:05:15 1 Q. And so then on July 11, 2017, at 11:56 a.m.,</p> <p>04:05:20 2 you told Mr. Hasen that Slate, quote, doesn't want it</p> <p>04:05:29 3 without more info than I can give them right now.</p> <p>04:05:32 4 Do you see that?</p> <p>04:05:32 5 A. I do.</p> <p>04:05:49 6 Q. And then at 12:07 p.m., you responded to an</p> <p>04:05:56 7 e-mail from Mr. Hasen which he suggested posting what</p> <p>04:06:00 8 you had written on the Election Law Blog.</p> <p>04:06:03 9 Do you see that?</p> <p>04:06:04 10 A. I do.</p> <p>04:06:04 11 Q. And, in fact, did you post it on the Election</p> <p>04:06:08 12 Law Blog?</p> <p>04:06:08 13 A. I don't -- I don't recall. I don't believe so,</p> <p>04:06:16 14 but I honestly don't recall.</p> <p>04:06:25 15 Those posts are all publicly available.</p> <p>04:06:28 16 Q. And then if you look at the July 11, 2017,</p> <p>04:06:34 17 e-mail from you to Perma [sic] Levy on the subject</p> <p>04:06:37 18 "J. Christian Adams Report."</p> <p>04:06:40 19 Perma Levy was a reporter at Mother Jones at</p> <p>04:06:46 20 the time; right?</p> <p>04:06:46 21 A. Pema, I believe.</p> <p>04:06:47 22 But yes.</p> <p>04:06:48 23 Q. Pema. You're absolutely right. Thank you.</p> <p>04:06:50 24 And Pema Levy is saying, I saw on Twitter that</p> <p>04:07:00 25 you indicated you had spoken with some of the people</p>	<p>04:09:09 1 Q. And the "him" to whom you were referring to was</p> <p>04:09:14 2 Christian Adams; isn't that right?</p> <p>04:09:17 3 A. Correct.</p> <p>04:09:53 4 DEPOSITION OFFICER: Counsel, whenever you get</p> <p>04:09:55 5 to a good point, can we get a comfort break?</p> <p>04:09:57 6 MR. LOCKERBY: Yes. Absolutely. This actually</p> <p>04:10:01 7 would be a good time.</p> <p>04:10:01 8 THE VIDEOGRAPHER: We're off the record at</p> <p>04:10:03 9 4:09 p.m.</p> <p>04:10:03 10 (A recess is taken.)</p> <p>04:19:58 11 THE VIDEOGRAPHER: We are back on the record at</p> <p>04:19:59 12 4:19 p.m.</p> <p>04:20:01 13 BY MR. LOCKERBY:</p> <p>04:20:08 14 Q. All right. There is an e-mail we were looking</p> <p>04:20:11 15 at from you to Cameron Bell, July 12, 2017, 5:47 p.m.</p> <p>04:20:23 16 And you wrote, "Believe it or not, it's not just pique.</p> <p>04:20:27 17 I'm trying to get what I can get him to say about</p> <p>04:20:31 18 knowledge and intent; but sadly, I think our Twitter war</p> <p>04:20:34 19 petered out."</p> <p>04:20:36 20 Now, the "him" to which you're referring was</p> <p>04:20:40 21 Christian Adams; right?</p> <p>04:20:42 22 A. Correct.</p> <p>04:20:42 23 Q. And you had exchanged a series of Tweets with</p> <p>04:20:51 24 Mr. Adams earlier that day; isn't that right?</p> <p>04:20:54 25 A. Correct.</p>
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<p>04:07:02 1 mentioned in the report. I've been, quote, calling a</p> <p>04:07:07 2 lot of people and haven't had much luck getting through.</p> <p>04:07:10 3 If you feel okay letting me know which people you've</p> <p>04:07:14 4 talked to, I'd love to try to reach out to them and see</p> <p>04:07:17 5 if they'd talk to me.</p> <p>04:07:19 6 Did you, in fact, let Pema Levy know with which</p> <p>04:07:24 7 individuals you had been in contact?</p> <p>04:07:25 8 A. I don't believe so. I should say, not</p> <p>04:07:34 9 specifically by name. I may have told her that I</p> <p>04:07:37 10 reached out to those whose e-mail addresses were listed</p> <p>04:07:40 11 in the documents attached to the report.</p> <p>04:07:52 12 Q. And then that same day, according to the</p> <p>04:07:59 13 privilege log that is marked as Exhibit 5, you had</p> <p>04:08:04 14 communications with Allison Riggs. That's Entries No. 2</p> <p>04:08:10 15 and 3. Is that right?</p> <p>04:08:14 16 A. Correct. No. Sorry. That's not correct. It</p> <p>04:08:16 17 was not the same day. My apologies.</p> <p>04:08:22 18 Q. It was the following day, July 12, 2017?</p> <p>04:08:25 19 A. Correct.</p> <p>04:08:27 20 Q. And then if you look back at Exhibit 34, the</p> <p>04:08:33 21 e-mail from you to Cameron Bell on July 12, 2017, at</p> <p>04:08:41 22 5:47 p.m., you write, "Believe it or not, it's not just</p> <p>04:08:56 23 pique. I'm trying to see what I can get him to say</p> <p>04:08:58 24 about knowledge and intent."</p> <p>04:09:04 25 A. Correct.</p>	<p>04:20:54 1 Q. And knowledge and intent are elements of a</p> <p>04:21:02 2 defamation claim; correct?</p> <p>04:21:05 3 A. I understand that they are, yes.</p> <p>04:21:07 4 Q. Yeah. And you were trying to get Mr. Adams to</p> <p>04:21:10 5 provide some evidence in his Tweets that might help</p> <p>04:21:15 6 establish the knowledge and intent elements of a</p> <p>04:21:18 7 defamation claim; isn't that right?</p> <p>04:21:21 8 A. I don't actually know that I had a legal case</p> <p>04:21:26 9 in mind.</p> <p>04:21:30 10 Q. What else would knowledge and intent be</p> <p>04:21:33 11 relevant to other than a legal case?</p> <p>04:21:36 12 A. To whether he expressed the intent that he was</p> <p>04:21:45 13 publishing false information about people claiming that</p> <p>04:21:50 14 they had committed felonies and that's -- given</p> <p>04:21:53 15 particularly his appointment to a national commission,</p> <p>04:22:00 16 national investigatory body, I thought that would be</p> <p>04:22:04 17 relevant in a quite a few circumstances.</p> <p>04:22:07 18 Q. So that was for the other purposes, not</p> <p>04:22:12 19 potential litigation?</p> <p>04:22:17 20 A. I don't know that I had the litigation in mind.</p> <p>04:22:20 21 I can't recall at the time exactly why I would have done</p> <p>04:22:26 22 that. You asked whether I did that in order to</p> <p>04:22:28 23 establish elements of a claim, and I said I don't know</p> <p>04:22:32 24 that I had that in mind.</p> <p>04:22:33 25 Q. Okay. Is that something that the Southern</p>

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<p>04:22:39 1 Coalition for Social Justice or the Protect Democracy</p> <p>04:22:40 2 Project suggested that you do?</p> <p>04:22:42 3 A. I don't think I can answer that question one</p> <p>04:22:47 4 way or another without invading someone else's work</p> <p>04:22:50 5 product that I'm not at liberty to waive.</p> <p>04:22:53 6 Q. On the page before that one, there is an e-mail</p> <p>04:22:57 7 from you, Wednesday, July 12, 2017, at 12:18 a.m., on</p> <p>04:23:04 8 the subject "J. Christian Adams."</p> <p>04:23:08 9 Who was Tova?</p> <p>04:23:10 10 A. Tova is Tova Wang. She's another colleague</p> <p>04:23:19 11 involved in election administration and voting. She --</p> <p>04:23:24 12 I believe she works for The Century Foundation, but I'm</p> <p>04:23:27 13 not sure where she worked on July of 2017.</p> <p>04:24:15 14 Q. As part of the July 12, 2017, 5:47 p.m. e-mail</p> <p>04:24:23 15 exchange with Cameron Bell, earlier there is a July 10,</p> <p>04:24:36 16 2017, 5:56 p.m. e-mail from her to you. And you see she</p> <p>04:24:44 17 says, "And I told Pema to call you first. She really</p> <p>04:24:48 18 wanted me to call JCA a racist, but I wouldn't."</p> <p>04:24:53 19 Do you see that?</p> <p>04:24:54 20 A. I do.</p> <p>04:24:55 21 Q. Did Pema ever say anything that suggested to</p> <p>04:25:09 22 you that she wanted you to call Mr. Adams a racist?</p> <p>04:25:13 23 A. She did not. Not that I recall, in any event.</p> <p>04:25:33 24 Q. And then if you turn a few pages -- and there</p> <p>04:25:40 25 are some e-mails beginning with one Thursday, July 13,</p>	<p>04:27:22 1 Presidential Advisory Commission on Electoral Integrity;</p> <p>04:27:26 2 isn't that right?</p> <p>04:27:32 3 MR. LEBOWITZ: Objection. Vague.</p> <p>04:27:33 4 THE WITNESS: I believe they -- they do reflect</p> <p>04:27:35 5 poorly on Mr. Adams. And also, to the extent that</p> <p>04:27:42 6 Mr. Adams' methodology was a methodology considered by</p> <p>04:27:48 7 the commission, that it would further reflect poorly on</p> <p>04:27:50 8 the commission, yes.</p> <p>04:27:52 9 BY MR. LOCKERBY:</p> <p>04:27:53 10 Q. And if you turn a few more pages, there's an</p> <p>04:27:56 11 e-mail exchange July 14, 2017, at 9:17 a.m. with Vanita</p> <p>04:28:05 12 Gupta with an attachment, "On the Eve Of The Purges,</p> <p>04:28:10 13 docx."</p> <p>04:28:11 14 Do you see that?</p> <p>04:28:11 15 A. I do.</p> <p>04:28:12 16 Q. And you had previously discussed drafting</p> <p>04:28:21 17 something on the subject "On the Eve Of The Purges";</p> <p>04:28:26 18 isn't that right?</p> <p>04:28:28 19 A. Correct.</p> <p>04:28:28 20 Q. And what was the purpose of that, as you</p> <p>04:28:30 21 understood it?</p> <p>04:28:32 22 A. It was -- as I understood it, Ms. Gupta wanted</p> <p>04:28:36 23 to discuss and describe what she perceived as some of</p> <p>04:28:43 24 the dangers of the commission and/or their aftermath for</p> <p>04:28:49 25 publication in an op-ed.</p>
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<p>04:25:45 1 2017, 9:28 a.m. to John Donnelly at DPCC.</p> <p>04:25:53 2 Who is Mr. Donnelly?</p> <p>04:25:55 3 A. He, as best I know, is involved with the Senate</p> <p>04:26:01 4 Democratic Policy and Communications Committee. I don't</p> <p>04:26:04 5 know what position he holds there.</p> <p>04:26:08 6 Q. And the event that he had written to you about</p> <p>04:26:19 7 was an event to draw attention to the President's</p> <p>04:26:24 8 Election Integrity Commission and voting rights issues.</p> <p>04:26:27 9 Do you see that?</p> <p>04:26:27 10 A. That's -- yes. I see that stated here.</p> <p>04:26:31 11 Q. And in response, one of the items you sent him,</p> <p>04:26:34 12 the top of the page, was the article about Ms. Erickson,</p> <p>04:26:41 13 the alleged noncitizen Guatemala --</p> <p>04:26:44 14 A. Correct.</p> <p>04:26:44 15 Q. -- is that right?</p> <p>04:26:45 16 A. Correct.</p> <p>04:26:45 17 Q. So did you think that was responsive to what he</p> <p>04:26:50 18 was asking you about?</p> <p>04:26:51 19 A. I did.</p> <p>04:26:52 20 Q. And then on the next page, you also sent</p> <p>04:26:58 21 Mr. Donnelly, what you said were e-mails from Virginia</p> <p>04:27:03 22 registrars about Christian Adams' noncitizen report?</p> <p>04:27:06 23 A. Correct.</p> <p>04:27:07 24 Q. And you believe that these e-mails would</p> <p>04:27:18 25 reflect poorly not just on Mr. Adams, but on the</p>	<p>04:28:56 1 Q. And you were doing a first draft for her; is</p> <p>04:28:56 2 that right?</p> <p>04:29:00 3 A. Correct.</p> <p>04:29:00 4 Q. And when you said, "It's over the top," what</p> <p>04:29:04 5 did you mean by that?</p> <p>04:29:05 6 A. I meant that I was attempting to capture a</p> <p>04:29:14 7 particularly vigorous tone. Not a tone that I</p> <p>04:29:18 8 personally would have used, but one that I thought she</p> <p>04:29:23 9 might welcome.</p> <p>04:29:24 10 Q. And then if you look further, do you see you</p> <p>04:29:43 11 had some additional e-mail exchanges with Ms. Gupta on</p> <p>04:29:50 12 July 18, 2017?</p> <p>04:29:59 13 A. Sounds right.</p> <p>04:30:00 14 Q. And ultimately, this "On the Eve Of The Purges"</p> <p>04:30:09 15 document was published in The New York Times; is that</p> <p>04:30:11 16 right?</p> <p>04:30:12 17 A. Correct. I should say, I don't recall what the</p> <p>04:30:27 18 title of the ultimate document published was; but the</p> <p>04:30:31 19 op-ed reflected here was ultimately published.</p> <p>04:31:14 20 MR. LOCKERBY: I'd like to have this marked as</p> <p>04:31:15 21 exhibit -- what are we up to now?</p> <p>04:31:20 22 DEPOSITION OFFICER: Thirty-nine.</p> <p>04:31:21 23 MR. LOCKERBY: -- 39, please.</p> <p>04:31:21 24 ///</p> <p>04:31:21 25 ///</p>

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<p>04:31:21 1 (Whereupon the document referred to is marked</p> <p>04:31:21 2 by the reporter as Defense Exhibit 39 for</p> <p>04:31:22 3 identification.)</p> <p>04:31:22 4 MR. BRIDGES: Are we done with 34?</p> <p>04:31:26 5 MR. LOCKERBY: We'll be going back to it.</p> <p>04:31:28 6 Because it has so many dates in the one PDF, it's one of</p> <p>04:31:33 7 those that I don't think we'll ever get away from.</p> <p>04:31:50 8 BY MR. LOCKERBY:</p> <p>04:31:51 9 Q. Was Exhibit 39 the draft "On the Eve of the</p> <p>04:31:56 10 Purges" document that you sent to Ms. Gupta?</p> <p>04:32:01 11 A. I believe so.</p> <p>04:32:03 12 Q. There is a reference in the third paragraph to</p> <p>04:32:13 13 the myth of voter fraud. What did you mean by that?</p> <p>04:32:20 14 A. Recall that this is a draft for someone else.</p> <p>04:32:27 15 So what I meant by that was the perception that voter</p> <p>04:32:34 16 fraud is rampant or widespread or affecting national</p> <p>04:32:41 17 elections in significant degrees.</p> <p>04:32:43 18 Q. And how does making sure that only living</p> <p>04:32:51 19 citizens of the United States vote once suppress the</p> <p>04:32:56 20 vote of those who are entitled to vote?</p> <p>04:33:00 21 A. I --</p> <p>04:33:06 22 MR. LEBOWITZ: Objection. Form.</p> <p>04:33:07 23 Argumentative.</p> <p>04:33:08 24 THE WITNESS: Yeah. But one doesn't</p> <p>04:33:10 25 necessarily entail the other, but there are certainly</p>	<p>04:34:57 1 falsely accused of feloniously registering while</p> <p>04:35:01 2 noncitizens.</p> <p>04:35:02 3 Q. So one of the acts of vigilante frenzy was the</p> <p>04:35:09 4 publication of information about individuals; is that</p> <p>04:35:09 5 right?</p> <p>04:35:13 6 A. Yes.</p> <p>04:35:13 7 Q. And --</p> <p>04:35:14 8 A. The publication of individuals falsely accused</p> <p>04:35:18 9 of committing crimes.</p> <p>04:35:21 10 Q. Well, I'm trying to break this down into pieces</p> <p>04:35:25 11 so I don't, you know, prompt an objection that I'm</p> <p>04:35:29 12 asking a compound question.</p> <p>04:35:30 13 A. Sure.</p> <p>04:35:30 14 Q. One act of vigilante frenzy of which you're</p> <p>04:35:37 15 accusing Mr. Adams was the publication of information</p> <p>04:35:44 16 contained in records that are available for public</p> <p>04:35:48 17 inspection under the NVRA; is that right?</p> <p>04:35:50 18 MR. LEBOWITZ: Objection. Mischaracterizes</p> <p>04:35:52 19 testimony.</p> <p>04:35:54 20 MR. BRIDGES: Misstates the testimony. And</p> <p>04:35:56 21 misstatement in the exhibit.</p> <p>04:35:59 22 THE WITNESS: Does all of those things. And</p> <p>04:36:01 23 remember, this is also written in someone else's voice;</p> <p>04:36:05 24 so to the extent you say I am accusing, I don't know</p> <p>04:36:12 25 that I would agree with that. But that's part of why I</p>
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<p>04:33:14 1 efforts that could involve one that would also entail</p> <p>04:33:16 2 the other. And to be clear, I don't believe I ever said</p> <p>04:33:21 3 that it did. So the "how" question assumes a premise</p> <p>04:33:26 4 I'm not sure I agree with in every circumstance.</p> <p>04:33:29 5 BY MR. LOCKERBY:</p> <p>04:33:32 6 Q. You have a statement in here that Kobach had</p> <p>04:33:35 7 blocked an unspecified number of voters from registering</p> <p>04:33:41 8 before the 2016 election and that he'd done so</p> <p>04:33:45 9 illegally.</p> <p>04:33:46 10 What was the basis for those allegations?</p> <p>04:33:48 11 A. That referred to an attempt to unlawfully</p> <p>04:33:56 12 require proof of citizenship from individuals for whom</p> <p>04:34:03 13 there was no other indication of ineligibility before</p> <p>04:34:06 14 individuals were able to register to vote in Kansas. A</p> <p>04:34:13 15 court later struck down that particular provision.</p> <p>04:34:17 16 Q. And then you claim in this draft that</p> <p>04:34:22 17 Mr. Blackwell illegally rejected registration forms</p> <p>04:34:27 18 because they were printed on paper he thought was too</p> <p>04:34:31 19 thin?</p> <p>04:34:32 20 A. Correct.</p> <p>04:34:32 21 Q. And then with respect to John Christian Adams,</p> <p>04:34:40 22 you refer to a vigilante frenzy. What's the vigilante</p> <p>04:34:47 23 frenzy that you're referring to there?</p> <p>04:34:48 24 A. The publication of personal information,</p> <p>04:34:52 25 including sensitive personal data, about individuals</p>	<p>04:36:23 1 answered your previous question in full because the</p> <p>04:36:25 2 context matters.</p> <p>04:36:28 3 The simple adoption of republication of records</p> <p>04:36:34 4 may or may not be permissible or have a -- have a moral</p> <p>04:36:45 5 flavor attached to them depending on the context. And</p> <p>04:36:50 6 I, in particular, was pointing out the publication of</p> <p>04:36:53 7 this personal information in the context of accusing</p> <p>04:36:57 8 them incorrectly of having committed felonies.</p> <p>04:37:00 9 BY MR. LOCKERBY:</p> <p>04:37:02 10 Q. Is the mere publication of records that are</p> <p>04:37:06 11 available for public inspection under the NVRA improper,</p> <p>04:37:11 12 in your view?</p> <p>04:37:12 13 A. It depends on the context.</p> <p>04:37:15 14 Q. So it's okay for some people to publish records</p> <p>04:37:19 15 obtained pursuant to the NVRA, but not others. Is</p> <p>04:37:19 16 that --</p> <p>04:37:19 17 MR. BRIDGES: Objection.</p> <p>04:37:19 18 BY MR. LOCKERBY:</p> <p>04:37:25 19 Q. -- what you're saying?</p> <p>04:37:26 20 MR. BRIDGES: Objection. Misstates testimony.</p> <p>04:37:27 21 Argumentative.</p> <p>04:37:28 22 THE WITNESS: It's not actually what I said. I</p> <p>04:37:31 23 said it depends on the context. If I say the following</p> <p>04:37:35 24 person is a child molester and then I publish that</p> <p>04:37:39 25 person's information, that may have a very different</p>

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<p>04:37:42 1 flavor from simply publishing that person's information</p> <p>04:37:45 2 without other contextual information.</p> <p>04:37:48 3 BY MR. LOCKERBY:</p> <p>04:37:49 4 Q. Is the mere publication of records available</p> <p>04:37:53 5 for inspection under the NVA -- NVRA improper, in your</p> <p>04:37:58 6 view?</p> <p>04:37:58 7 A. It depends on the context.</p> <p>04:38:01 8 Q. Is the mere publication of records available</p> <p>04:38:17 9 for public inspection under the NVRA an act of vigilante</p> <p>04:38:23 10 frenzy?</p> <p>04:38:24 11 A. It depends on the context.</p> <p>04:38:25 12 Q. What is a vigilante frenzy anyway?</p> <p>04:38:27 13 MR. BRIDGES: Objection. Argumentative.</p> <p>04:38:29 14 I'm not a party to this action, but I've talked</p> <p>04:38:31 15 about how long it's gone on. And could you explain to</p> <p>04:38:34 16 me how this is even marginally relevant to the issues in</p> <p>04:38:37 17 the lawsuit. Isn't a court going to determine whether</p> <p>04:38:39 18 something's lawful or unlawful? And whether this</p> <p>04:38:43 19 deponent or any other deponent thinks that something's</p> <p>04:38:46 20 wrong or inappropriate or a vigilante frenzy, how's it</p> <p>04:38:51 21 got anything to do with the lawsuit?</p> <p>04:38:53 22 MR. LOCKERBY: Well, the lawsuit's complicated;</p> <p>04:38:55 23 but I can tell you that our client has an anti-SLAPP</p> <p>04:38:59 24 defense and also defenses that the plaintiffs in this</p> <p>04:39:05 25 case are seeking an interpretation of the Voting Rights</p>	<p>04:40:40 1 Social Justice and the Protect Democracy Project,</p> <p>04:40:44 2 disagree.</p> <p>04:40:44 3 MR. LEBOWITZ: May I --</p> <p>04:40:45 4 MR. BRIDGES: Make all those arguments --</p> <p>04:40:46 5 MR. LEBOWITZ: May I suggest that if you need</p> <p>04:40:47 6 to characterize what the evidence does or does not show</p> <p>04:40:50 7 in your view or discuss what his testimony is relevant</p> <p>04:40:53 8 to or what you anticipate will show, that you do it</p> <p>04:40:56 9 outside the presentation of the witness to the extent</p> <p>04:40:57 10 you need to do that.</p> <p>04:40:58 11 MR. LOCKERBY: Well, my preference would be not</p> <p>04:41:00 12 to discuss it at all. I'd rather just get the</p> <p>04:41:02 13 deposition done.</p> <p>04:41:03 14 MR. BRIDGES: And that's what I'd like to do,</p> <p>04:41:04 15 too; and my point is I think we're spending a lot of</p> <p>04:41:07 16 time making arguments to the Court in front of the</p> <p>04:41:09 17 witness and asking him questions that are arguments to</p> <p>04:41:13 18 the Court. So please -- please keep that in mind that</p> <p>04:41:18 19 there is a relevance barometer here.</p> <p>04:41:23 20 MR. LOCKERBY: There is.</p> <p>04:41:27 21 I'd like to have this marked as Exhibit 40,</p> <p>04:41:31 22 please.</p> <p>04:41:31 23 (Whereupon the document referred to is marked</p> <p>04:41:31 24 by the reporter as Defense Exhibit 40 for</p> <p>04:41:47 25 identification.)</p>
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<p>04:39:09 1 Act and the Ku Klux Klan Act for the improper purpose of</p> <p>04:39:13 2 silencing the expression of views with which they dis --</p> <p>04:39:18 3 which not necessarily the plaintiffs, but certain groups</p> <p>04:39:21 4 disagree and that also have the purpose and effect of</p> <p>04:39:27 5 chilling their First Amendment rights to petition the</p> <p>04:39:30 6 government. And so that's among the many issues that</p> <p>04:39:37 7 the line of questioning is relevant to.</p> <p>04:39:41 8 MR. BRIDGES: Assuming all that to be true and</p> <p>04:39:43 9 without denigrating my client, what's his view have to</p> <p>04:39:47 10 do with any of whether that's true, untrue, a legal</p> <p>04:39:50 11 defense, not a legal defense, whether a civil violation</p> <p>04:39:54 12 has been committed, whether a felony's been committed?</p> <p>04:39:57 13 He's just a law professor. What difference does it make</p> <p>04:40:00 14 what he thinks about it or whether he calls it a</p> <p>04:40:01 15 vigilante frenzy?</p> <p>04:40:03 16 MR. LOCKERBY: Well, your client is not just a</p> <p>04:40:04 17 law professor. Your client is a law professor without</p> <p>04:40:09 18 whose involvement we wouldn't be sitting here because</p> <p>04:40:11 19 the evidence is overwhelming that he took it upon</p> <p>04:40:13 20 himself, either on his own or at the behest of others,</p> <p>04:40:19 21 to engage in, among other things, barratry, whether it's</p> <p>04:40:23 22 illegal barratry or not, to procure plaintiffs for this</p> <p>04:40:29 23 litigation for the purpose of trying to suppress the</p> <p>04:40:33 24 expression of views with -- with which certain</p> <p>04:40:36 25 organizations, including the Southern Coalition for</p>	<p>04:41:47 1 THE WITNESS: Thank you.</p> <p>04:41:48 2 BY MR. LOCKERBY:</p> <p>04:41:54 3 Q. Exhibit 40 is another version of what was</p> <p>04:41:59 4 originally titled "On the Eve Of The Purges" with a</p> <p>04:42:03 5 markup by Vanita Gupta and then your comments in the</p> <p>04:42:08 6 margin; is that right?</p> <p>04:42:09 7 A. Correct.</p> <p>04:42:10 8 Q. And if you look on the second page, do you see</p> <p>04:42:42 9 there is a sentence that says, "J. Christian Adams</p> <p>04:42:47 10 published personal information about specific people he</p> <p>04:42:50 11 wrongly accused of committing multiple felonies in a</p> <p>04:42:55 12 deeply flawed hunt for apparent fraud."</p> <p>04:42:58 13 Do you see that?</p> <p>04:42:58 14 A. I do.</p> <p>04:42:59 15 Q. And the underlying words -- the phrases are</p> <p>04:43:03 16 words that you were proposing adding; is that right?</p> <p>04:43:07 17 A. I believe so.</p> <p>04:43:08 18 Q. And then the words and phrases and sentences</p> <p>04:43:14 19 that are stricken through, that is verbiage that you</p> <p>04:43:18 20 were proposing removing; isn't that right?</p> <p>04:43:20 21 A. Correct.</p> <p>04:43:20 22 Q. And one thing that you struck in its entirety</p> <p>04:43:25 23 was the statement, "In fact, they were all eligible</p> <p>04:43:28 24 American voters."</p> <p>04:43:29 25 Do you see that?</p>

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<p>04:43:29 1 A. Correct.</p> <p>04:43:30 2 Q. And that was your comment, JL10, that reads,</p> <p>04:43:38 3 "They weren't all eligible. I know some of them weren't</p> <p>04:43:42 4 eligible. Indeed, some said they weren't eligible; and</p> <p>04:43:46 5 I don't actually know how many of them were eligible. I</p> <p>04:43:50 6 just know some of them weren't eligible because I talked</p> <p>04:43:55 7 to a few who were eligible."</p> <p>04:43:57 8 Those were your words; right?</p> <p>04:43:58 9 A. Correct.</p> <p>04:43:58 10 Q. And that was a true statement; correct?</p> <p>04:44:00 11 A. Yes.</p> <p>04:44:00 12 Q. And -- and when you said, "Some said they</p> <p>04:44:05 13 weren't eligible," which voters were you referring to</p> <p>04:44:07 14 there?</p> <p>04:44:08 15 A. Voters who had marked down on the forms</p> <p>04:44:11 16 themselves, "I am not a citizen," or had otherwise</p> <p>04:44:15 17 indicated on the forms themselves that they were not</p> <p>04:44:19 18 otherwise eligible to vote.</p> <p>04:44:20 19 Q. No. But this says, "Indeed, some said they</p> <p>04:44:24 20 weren't eligible."</p> <p>04:44:24 21 A. Correct.</p> <p>04:44:25 22 Q. Some of them actually told you they weren't</p> <p>04:44:27 23 eligible; isn't that right?</p> <p>04:44:29 24 A. No. Not to my knowledge. I would have to</p> <p>04:44:31 25 refresh.</p>	<p>04:46:13 1 Q. Okay.</p> <p>04:46:23 2 A. I don't know whether I can answer one way or</p> <p>04:46:25 3 another.</p> <p>04:48:17 4 MR. LOCKERBY: I'd like to have this marked as</p> <p>04:48:19 5 Exhibit 41, please.</p> <p>04:48:19 6 (Whereupon the document referred to is marked</p> <p>04:48:19 7 by the reporter as Defense Exhibit 41 for</p> <p>04:48:36 8 identification.)</p> <p>04:48:36 9 THE WITNESS: Thank you.</p> <p>04:48:36 10 BY MR. LOCKERBY:</p> <p>04:48:55 11 Q. Exhibit 41 is a document you produced. It was</p> <p>04:48:59 12 produced as a single PDF. We've numbered it No. 34.</p> <p>04:49:05 13 But this consists of e-mail exchanges that you had with</p> <p>04:49:15 14 the Southern Coalition for Social Justice and the</p> <p>04:49:18 15 Protect Democracy Project for which there's been no</p> <p>04:49:23 16 assertion of work product except with respect to the</p> <p>04:49:27 17 redacted sections; is that right?</p> <p>04:49:30 18 A. Correct.</p> <p>04:49:30 19 Q. And if you look, there's an e-mail on Thursday,</p> <p>04:50:02 20 April 12, 2018, from Lara Bergthold to you at 9:06 a.m.?</p> <p>04:50:08 21 A. Correct.</p> <p>04:50:09 22 Q. And that was on Thursday -- Thursday, April 12,</p> <p>04:50:17 23 2018, was the date on which this lawsuit was filed; is</p> <p>04:50:17 24 that right?</p> <p>04:50:21 25 A. I believe that's correct.</p>
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<p>04:44:32 1 Q. What would you have to do to refresh?</p> <p>04:44:35 2 A. I would have to take a look at my notes about</p> <p>04:44:38 3 the individuals with whom I spoke.</p> <p>04:44:41 4 Q. And would those notes include communications</p> <p>04:44:45 5 with the Southern Coalition for Social Justice and the</p> <p>04:44:49 6 Protect Democracy Project, potentially?</p> <p>04:44:51 7 A. Not anymore. I -- I'm referring to the</p> <p>04:44:56 8 exhibits that have been redacted.</p> <p>04:44:59 9 Q. But there are other communications with the</p> <p>04:45:04 10 Southern Coalition for Social Justice and the Protect</p> <p>04:45:08 11 Democracy Project that have not only been redacted, but</p> <p>04:45:10 12 not produced altogether; correct?</p> <p>04:45:17 13 A. Yes. I'm only going to -- I want to add, the</p> <p>04:45:21 14 fact that you asked "but" implies that that's related to</p> <p>04:45:24 15 the prior sentence; and I don't believe those two things</p> <p>04:45:27 16 are related. There are, in fact, other communications</p> <p>04:45:30 17 with the Southern Coalition for Social Justice and</p> <p>04:45:33 18 Protect Democracy Project that I have not produced. I</p> <p>04:45:38 19 don't believe that is related to the question you asked</p> <p>04:45:41 20 before that.</p> <p>04:45:48 21 Q. Did you tell the Southern Coalition for Social</p> <p>04:45:53 22 Justice or the Protect Democracy Project which voters</p> <p>04:45:59 23 said they weren't eligible?</p> <p>04:46:08 24 A. I don't know whether I can answer that question</p> <p>04:46:11 25 without waiving a privilege that's not mine.</p>	<p>04:50:22 1 Q. Ms. Bergthold writes, "Hi. I hear you talked</p> <p>04:50:33 2 to Larry Schwartzol and agreed to do some validating for</p> <p>04:50:37 3 this case. Complaint and press release are below.</p> <p>04:50:39 4 Suggested Tweets below. Feel free to make them your</p> <p>04:50:43 5 own. And then when all this is done and assuming we</p> <p>04:50:45 6 don't meet in the streets to protest Mueller's being</p> <p>04:50:49 7 fired, let's grab lunch sometime soon."</p> <p>04:50:52 8 Did you understand that -- well, first of all,</p> <p>04:50:56 9 did you know Lara Bergthold before this date and time?</p> <p>04:51:01 10 A. Yes.</p> <p>04:51:01 11 Q. How did you know her?</p> <p>04:51:02 12 A. We had worked together in a number of</p> <p>04:51:06 13 capacities, including on Wesley Clark's very short</p> <p>04:51:11 14 presidential race.</p> <p>04:51:13 15 Q. This says she is with a organization called</p> <p>04:51:18 16 WeAreRALLY.com. What is that?</p> <p>04:51:19 17 A. I believe that RALLY is a multifaceted public</p> <p>04:51:26 18 engagement and occasionally public relations firm.</p> <p>04:51:32 19 WeAreRALLY.com is their the Web address, but I believe</p> <p>04:51:37 20 the organization is called RALLY.</p> <p>04:51:41 21 Q. And was RALLY retained to help publicize the</p> <p>04:51:48 22 LULAC of Richmond versus PILF case?</p> <p>04:51:52 23 A. I don't know. That's my understanding, but I</p> <p>04:51:55 24 don't know.</p> <p>04:51:55 25 Q. Have you yourself ever spoken with anyone at</p>

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<p>04:52:00 1 LULAC of Richmond?</p> <p>04:52:02 2 A. No.</p> <p>04:52:03 3 Q. If you turn the page, you see there is a</p> <p>04:52:08 4 response from you to Ms. Berghold on Thursday,</p> <p>04:52:12 5 April 19, 2018?</p> <p>04:52:16 6 A. Yes.</p> <p>04:52:17 7 Q. In the first paragraph you write, "As I think</p> <p>04:52:28 8 you know, I'm a giant fan of the case. I helped round</p> <p>04:52:34 9 up a few of the initial plaintiffs and hounded Larry and</p> <p>04:52:38 10 Allison enough that I half think they brought the case</p> <p>04:52:42 11 to get rid of me. I'm delighted to keep on validating</p> <p>04:52:47 12 as long as I can. I hope they roundly kick the ass of</p> <p>04:52:51 13 the folks on the other side."</p> <p>04:52:53 14 First of all, which of the initial plaintiffs</p> <p>04:52:56 15 had you helped round up?</p> <p>04:52:57 16 A. Yeah. That turns out to be an inaccurate</p> <p>04:53:01 17 statement. I believe that the only plaintiff that I</p> <p>04:53:07 18 spoke with before they signed on to the case was</p> <p>04:53:12 19 Ms. Freeman.</p> <p>04:53:16 20 Q. And when you wrote that you, quote, hounded</p> <p>04:53:19 21 Larry and Allison enough that I half think they brought</p> <p>04:53:23 22 the case to get rid of me, the Larry was Larry</p> <p>04:53:27 23 Schwartzol --</p> <p>04:53:27 24 A. It was.</p> <p>04:53:28 25 Q. -- of Protect Democracy Project?</p>	<p>04:55:45 1 Mr. Schwartzol writes, "I thought you'd want to know</p> <p>04:55:50 2 that we just beat MTD in our case against Adams."</p> <p>04:55:55 3 Do you see that?</p> <p>04:55:56 4 A. I do.</p> <p>04:55:56 5 Q. And there is a link to a press release on the</p> <p>04:56:01 6 Protect Democracy Web site. Do you see that?</p> <p>04:56:04 7 A. I do.</p> <p>04:56:04 8 Q. And then Mr. Schwartzol writes, "Needless to</p> <p>04:56:08 9 say, we welcome amplification, comment, et cetera."</p> <p>04:56:12 10 What did you understand him to mean by that?</p> <p>04:56:14 11 A. Similar to validation in this context. I</p> <p>04:56:20 12 understood that to mean that he would welcome my posting</p> <p>04:56:24 13 on, talking about, or talking to reporters about the</p> <p>04:56:32 14 development.</p> <p>04:56:33 15 Q. And did you, in fact, do that?</p> <p>04:56:36 16 A. I don't actually remember. I don't remember.</p> <p>04:57:27 17 MR. LOCKERBY: I'd like to have this marked as</p> <p>04:57:29 18 Exhibit 41, please.</p> <p>04:57:34 19 MR. BRIDGES: I think you said this one was</p> <p>04:57:37 20 marked 41.</p> <p>04:57:38 21 DEPOSITION OFFICER: Yes.</p> <p>04:57:38 22 MR. LOCKERBY: I did? Okay. I'm sorry. This</p> <p>04:57:40 23 would obviously be 42.</p> <p>04:57:57 24 Did I give one of you two cop -- I gave you two</p> <p>04:58:00 25 copies.</p>
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<p>04:53:29 1 A. Correct.</p> <p>04:53:29 2 Q. And Allison was Allison Riggs of the Southern</p> <p>04:53:35 3 Coalition for Social Justice?</p> <p>04:53:35 4 A. Correct.</p> <p>04:53:36 5 Q. And what did you mean when you said that you</p> <p>04:53:41 6 "hounded them enough that I half think they brought the</p> <p>04:53:45 7 case to get rid of me"?</p> <p>04:53:46 8 A. That's an -- a very -- a misinformed or</p> <p>04:53:52 9 misfired attempt to be funny. It conveys the fact that</p> <p>04:53:59 10 we spoke quite a bit. But I actually would not stand</p> <p>04:54:03 11 behind that characterization as a truthful one.</p> <p>04:54:07 12 Q. And when you referred to "validated," what did</p> <p>04:54:12 13 you mean?</p> <p>04:54:12 14 A. In -- in my experience, validating generally</p> <p>04:54:18 15 means talking about the merits of the case when</p> <p>04:54:23 16 reporters ask. And so that's what I meant by that. I</p> <p>04:54:35 17 should say validating in this context means talking</p> <p>04:54:38 18 about the merits of the case when a reporter asks.</p> <p>04:54:41 19 That's not been obviously what it means all the time.</p> <p>04:54:45 20 Q. And then when you said, "I hope they roundly</p> <p>04:54:52 21 kick the ass of the folks on the other side," were you</p> <p>04:54:57 22 referring to PILF and Mr. Adams?</p> <p>04:54:59 23 A. I was.</p> <p>04:55:32 24 Q. There's an e-mail to you from Larry Schwartzol</p> <p>04:55:36 25 on Monday, August 13, 2018, at 3:26 p.m., where</p>	<p>04:58:00 1 (Whereupon the document referred to is marked</p> <p>04:58:00 2 by the reporter as Defense Exhibit 42 for</p> <p>04:58:03 3 identification.)</p> <p>04:58:03 4 THE WITNESS: Thank you.</p> <p>04:58:17 5 BY MR. LOCKERBY:</p> <p>04:58:18 6 Q. Exhibit 42 is a PJ Media article by Mr. Adams</p> <p>04:58:23 7 dated July 20, 2017, entitled "President Trump's Voter</p> <p>04:58:33 8 Fraud Commission Meets, Smeared By Deniers."</p> <p>04:58:37 9 Do you see that?</p> <p>04:58:38 10 A. I do.</p> <p>04:58:38 11 Q. Have you seen this article before?</p> <p>04:58:40 12 A. I don't believe I have. It's possible, but I'm</p> <p>04:58:44 13 not sure.</p> <p>04:58:44 14 Q. And on the second page do you see there is a</p> <p>04:58:48 15 reproduction that says it's a Brennan Center graphic?</p> <p>04:58:54 16 A. I -- I see that that's there, yes.</p> <p>04:58:57 17 Q. And do you see it refers to President Trump's</p> <p>04:59:02 18 four horsemen and voter suppression?</p> <p>04:59:04 19 A. I see that's what it says.</p> <p>04:59:06 20 Q. And it has pictures of Mr. Adams, Ken</p> <p>04:59:11 21 Blackwell, Chris Kobach, and Hans von Spakovsky, as well</p> <p>04:59:15 22 as President Trump; is that right?</p> <p>04:59:17 23 A. I see that's what's there. That's correct.</p> <p>04:59:32 24 Q. Have you ever seen any of the Tweets that are</p> <p>04:59:38 25 reproduced on Pages 4 and 5?</p>

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<p>04:59:51 1 A. No. And some of them are disgusting.</p> <p>05:00:03 2 Q. And then if you look at Page 6, you see there's</p> <p>05:00:12 3 a Twitter graphic posted by Ken Blackwell that says,</p> <p>05:00:15 4 "The fearless foursome. We don't believe in voters</p> <p>05:00:18 5 without borders"?</p> <p>05:00:19 6 A. I see that's how it's identified, yes.</p> <p>05:00:22 7 Q. And then below that there is a reference to</p> <p>05:00:24 8 you. It says, "But there are also the high-minded</p> <p>05:00:27 9 slurs. Consider Justin Levitt. This leftist academic</p> <p>05:00:33 10 (I repeat myself) is known as the smartest man in</p> <p>05:00:38 11 California. If you didn't know he was, he'll remind</p> <p>05:00:41 12 you."</p> <p>05:00:41 13 You see your picture under that?</p> <p>05:00:43 14 A. I do.</p> <p>05:00:48 15 Q. And he goes on to write, on Page 7, underneath</p> <p>05:00:56 16 your photo, "Levitt is part of the academic crowd that</p> <p>05:01:01 17 pushes the voter-fraud-is-a-myth narrative to the legacy</p> <p>05:01:06 18 media. Levitt doesn't like anyone talking about aliens</p> <p>05:01:11 19 getting on the voter rolls. When the Public Interest</p> <p>05:01:14 20 Legal Foundation documented over 5,500 voter</p> <p>05:01:18 21 registrations canceled for citizenship problems, Levitt</p> <p>05:01:22 22 went to work. See, he was at the justice department</p> <p>05:01:26 23 during the Obama administration and was part of the</p> <p>05:01:30 24 neglect that led to corrupted roles. Because some of</p> <p>05:01:33 25 the people who were removed in Virginia were eventually</p>	<p>05:02:53 1 A. I certainly agree that legitimate voters should</p> <p>05:02:56 2 not be removed from the rolls for not being citizens.</p> <p>05:03:00 3 It's my understanding that if there were more than 5,000</p> <p>05:03:09 4 instances of removal, they were not removed for long.</p> <p>05:03:12 5 And I'm not sure that I would characterize them as</p> <p>05:03:16 6 having been removed from the rolls. That's part of the</p> <p>05:03:20 7 actual procedures that I wanted to get clear with the</p> <p>05:03:23 8 state before commenting further that -- that we</p> <p>05:03:25 9 discussed earlier in the deposition.</p> <p>05:03:27 10 So I agree with the notion that legitimate</p> <p>05:03:32 11 voters should not be removed from the rolls for not</p> <p>05:03:35 12 being citizens. The rest of that paragraph contains a</p> <p>05:03:38 13 few premises that I don't -- I don't know whether</p> <p>05:03:40 14 they're correct or not.</p> <p>05:04:53 15 MR. LOCKERBY: I'd like to have this marked as</p> <p>05:04:55 16 Exhibit 43, please.</p> <p>05:04:55 17 (Whereupon the document referred to is marked</p> <p>05:04:55 18 by the reporter as Defense Exhibit 43 for</p> <p>05:05:12 19 identification.)</p> <p>05:05:12 20 THE WITNESS: Thank you.</p> <p>05:05:12 21 BY MR. LOCKERBY:</p> <p>05:05:25 22 Q. Exhibit 43 is another document that you</p> <p>05:05:32 23 produced in -- again, it was a PDF and it had multiple</p> <p>05:05:37 24 documents in it. We've numbered it 6. And the first</p> <p>05:05:42 25 page is a May 30, 2017, e-mail. I wanted to direct your</p>
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<p>05:01:36 1 put back on the rolls, he thinks the whole report can be</p> <p>05:01:40 2 ignored."</p> <p>05:01:42 3 The next paragraph -- I realize you probably</p> <p>05:01:46 4 don't agree with any or many of the statements in</p> <p>05:01:48 5 that --</p> <p>05:01:48 6 MR. BRIDGES: Is -- is there a question</p> <p>05:01:50 7 pending?</p> <p>05:01:51 8 MR. LOCKERBY: There is about to be a question,</p> <p>05:01:52 9 yes.</p> <p>05:01:54 10 BY MR. LOCKERBY:</p> <p>05:01:54 11 Q. In the following paragraph Mr. Adams writes,</p> <p>05:01:59 12 "The problem is that governments shouldn't be removing</p> <p>05:02:02 13 citizens from the rolls as noncitizens any more than</p> <p>05:02:06 14 governments should be putting noncitizens on the rolls."</p> <p>05:02:10 15 Is that a statement with which you agree?</p> <p>05:02:13 16 A. That -- that one sentence is a statement with</p> <p>05:02:15 17 which I heartily agree, yes.</p> <p>05:02:18 18 Q. And below that there is a statement that says,</p> <p>05:02:25 19 Our report called any improper removal of citizens,</p> <p>05:02:29 20 quote, a serious problem with less maintenance in the</p> <p>05:02:33 21 commonwealth. Legitimate voters should not be removed</p> <p>05:02:37 22 from the rolls for not being citizens. If this explains</p> <p>05:02:41 23 5,550-plus instances of removal for citizenship defects,</p> <p>05:02:47 24 then that circumstance is also appalling.</p> <p>05:02:50 25 Do you agree with that statement?</p>	<p>05:05:48 1 attention to an e-mail regarding the Trump Election</p> <p>05:05:55 2 Commission dated July 21, 2017.</p> <p>05:06:03 3 A. Okay.</p> <p>05:06:25 4 Q. Who is Gerald Kent, to whom you sent this</p> <p>05:06:28 5 e-mail?</p> <p>05:06:28 6 A. I believe he's a friend of my father's, but I</p> <p>05:06:37 7 am not entirely sure.</p> <p>05:06:41 8 Q. And the subject line of the e-mail is, "Trump</p> <p>05:06:45 9 Election Commission Already Under Fire Holds First</p> <p>05:06:47 10 Meeting, The New York Times."</p> <p>05:06:50 11 Do you see that?</p> <p>05:06:51 12 A. I do.</p> <p>05:06:52 13 Q. And in response, you didn't comment on The New</p> <p>05:07:02 14 York Times article at all, did you?</p> <p>05:07:03 15 A. I did not.</p> <p>05:07:49 16 Q. Okay. I'd like to have you turn back now,</p> <p>05:07:52 17 please, Exhibit 34 once again.</p> <p>05:07:57 18 A. Okay.</p> <p>05:07:58 19 Q. And there should be in there an August 10,</p> <p>05:08:08 20 2017, e-mail or series of e-mails from you to Jane Timm</p> <p>05:08:15 21 at NBC Universal.</p> <p>05:08:17 22 A. Yes.</p> <p>05:08:19 23 MR. LEBOWITZ: Which exhibit is this? Sorry.</p> <p>05:08:22 24 THE WITNESS: It's the larger --</p> <p>05:08:23 25 MR. LEBOWITZ: Thirty-four?</p>

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<p>05:08:25 1 THE WITNESS: Thirty-four.</p> <p>05:08:26 2 MR. LOCKERBY: Yes.</p> <p>05:08:34 3 MR. GORMAN: What date?</p> <p>05:08:35 4 MR. LOCKERBY: August 10 --</p> <p>05:08:36 5 THE WITNESS: August -- sorry.</p> <p>05:08:40 6 MR. LOCKERBY: -- 2017.</p> <p>05:09:01 7 MR. GORMAN: Just so we're on the same page,</p> <p>05:09:03 8 you're talking 10:06 a.m., 10:09 a.m., or 10:33 a.m.?</p> <p>05:09:08 9 MR. LOCKERBY: Let's start with the one --</p> <p>05:09:10 10 MR. GORMAN: Or 9:50, actually.</p> <p>05:09:12 11 MR. LOCKERBY: 10:20 -- I see what you're</p> <p>05:09:13 12 saying.</p> <p>05:09:15 13 MR. GORMAN: That's a different thread.</p> <p>05:09:28 14 MR. LOCKERBY: The 10:06 a.m. would be first.</p> <p>05:09:33 15 MR. GORMAN: Thank you.</p> <p>05:09:34 16 MR. LOCKERBY: You're welcome.</p> <p>05:09:51 17 BY MR. LOCKERBY:</p> <p>05:09:51 18 Q. So the 10:06 a.m. e-mail is from you to Emily</p> <p>05:09:58 19 Samsel. Who is she?</p> <p>05:10:00 20 A. She, I believe, works at a public relations and</p> <p>05:10:12 21 holding and messaging firm called SKDKnickerbocker.</p> <p>05:10:19 22 Q. And the subject line is "NBC News Inquiry:</p> <p>05:10:24 23 J. Christian Adams Profile." Do you see that?</p> <p>05:10:27 24 A. Correct.</p> <p>05:10:28 25 Q. Do you have any understanding as to why Emily</p>	<p>05:12:36 1 To whom did you understand her to be referring</p> <p>05:12:39 2 when she referred to "your publicist"?</p> <p>05:12:42 3 A. I understood her to be referring to Emily</p> <p>05:12:45 4 Samsel, who is not my publicist.</p> <p>05:12:49 5 Q. Who is your publicist?</p> <p>05:12:50 6 A. I am not fancy enough for a publicist still.</p> <p>05:13:05 7 Q. And then if you turn a few pages, there's an</p> <p>05:13:16 8 August 16, 2017, e-mail posting. Do you see that?</p> <p>05:13:23 9 A. I do.</p> <p>05:13:24 10 Q. And that was copied to a voting fax and</p> <p>05:13:31 11 GoogleGroups.com. What is that e-mail address?</p> <p>05:13:33 12 A. I did not set it up. I understand it to be a</p> <p>05:13:39 13 number of individuals concerned with responding</p> <p>05:13:49 14 factually and moderately and providing underlying data</p> <p>05:13:58 15 and context for overcharged claims of many different</p> <p>05:14:06 16 kinds with respect to election administration.</p> <p>05:14:14 17 Q. Does it address undercharged claims?</p> <p>05:14:18 18 A. It welcomes undercharged claims. The -- as I</p> <p>05:14:21 19 understand it, part of the orientation of the group is</p> <p>05:14:25 20 to supply real data and the facts that are known. And</p> <p>05:14:34 21 undercharged claims actually respond to real data and</p> <p>05:14:38 22 the facts that are known.</p> <p>05:14:47 23 Q. And who is Charles Stewart?</p> <p>05:14:51 24 A. He's a professor of political science -- he</p> <p>05:14:55 25 holds a fancier title than that -- at MIT.</p>
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<p>05:10:31 1 Samsel would be contacting you about discussing</p> <p>05:10:36 2 J. Christian Adams with NBC news?</p> <p>05:10:40 3 A. I believe -- I -- I had spoken to her about</p> <p>05:10:47 4 several other election-related developments that year</p> <p>05:10:52 5 and before, and I believe she sent an inquiry out to a</p> <p>05:11:01 6 broader group -- she wasn't sending an e-mail out to me</p> <p>05:11:06 7 in particular -- about whether anybody wished to</p> <p>05:11:10 8 comment.</p> <p>05:11:11 9 Q. And you responded that you wished to comment</p> <p>05:11:23 10 about J. Christian Adams?</p> <p>05:11:25 11 A. I said that I could -- that I would be</p> <p>05:11:28 12 available.</p> <p>05:11:28 13 Q. And did you, in fact, discuss Christian Adams</p> <p>05:11:33 14 with NBC News?</p> <p>05:11:34 15 A. I did.</p> <p>05:11:37 16 Q. And that's something you were volunteering to</p> <p>05:11:40 17 do here?</p> <p>05:11:41 18 A. Yes.</p> <p>05:11:41 19 Q. And then if you look at the e-mail August 10,</p> <p>05:12:00 20 2017, 10:29 a.m., from you to Jane Timm, Ms. Timm had</p> <p>05:12:11 21 written at 10:13 a.m., "Hi again. Your publicist just</p> <p>05:12:16 22 tried to send me your way while I was typing this</p> <p>05:12:21 23 e-mail. Small voting rights world, eh? I'm profiling</p> <p>05:12:26 24 Christian Adams as a way into the lawsuits-to-purges</p> <p>05:12:29 25 story. Got time to chat this afternoon or tomorrow?"</p>	<p>05:15:00 1 Q. David Becker. Who is he?</p> <p>05:15:01 2 A. He is a former Department of Justice official.</p> <p>05:15:06 3 He now has, I believe, a consulting entity on its own.</p> <p>05:15:12 4 He helped to establish a multistate consortium --</p> <p>05:15:19 5 bipartisan multistate consortium for comparing voter</p> <p>05:15:23 6 registration rolls.</p> <p>05:15:27 7 Q. And who is Adam Ambrogi -- Ambrogi?</p> <p>05:15:32 8 A. Adam Ambrogi is, I believe, a program</p> <p>05:15:35 9 officer -- I may get his title wrong as well -- with an</p> <p>05:15:38 10 entity called the Democracy Fund, a funding entity.</p> <p>05:15:43 11 Q. And Jean Bordewich. Who is that?</p> <p>05:15:46 12 A. I believe she is -- I don't know her title,</p> <p>05:15:48 13 actually. I shouldn't speculate. She is with</p> <p>05:15:51 14 Hewlett -- the Hewlett Foundation.</p> <p>05:15:53 15 Q. And then Josh Dornier?</p> <p>05:15:55 16 A. I believe he's with SKDKnickerbocker, the</p> <p>05:16:01 17 public relations firm that I mentioned before.</p> <p>05:16:07 18 Q. On the fourth bullet point on this page, you</p> <p>05:16:11 19 write, "To David's rhetorical point on bad matching</p> <p>05:16:15 20 leading to law-abiding citizens being accused of fraud,</p> <p>05:16:19 21 this is where Christian Adams' presence on the</p> <p>05:16:21 22 commission may be useful because he's discouraging and</p> <p>05:16:25 23 sloppy in this respect."</p> <p>05:16:30 24 When you said that Christian Adams' presence on</p> <p>05:16:32 25 the commission may be useful, the commission to which</p>

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<p>05:16:35 1 you were referring was the Presidential Advisory</p> <p>05:16:39 2 Commission on Electoral Integrity?</p> <p>05:16:41 3 A. Correct.</p> <p>05:16:41 4 Q. And why did you believe that Mr. Adams'</p> <p>05:16:43 5 presence on the commission may be useful?</p> <p>05:16:47 6 A. It shone a particular spotlight on some of the</p> <p>05:16:56 7 discouragingly sloppy methodology of the commission to</p> <p>05:16:59 8 date. The commission had taken a number of what I</p> <p>05:17:06 9 perceive to be missteps, and I was not particularly</p> <p>05:17:12 10 impressed with the way they were going about their</p> <p>05:17:15 11 business.</p> <p>05:17:30 12 Q. And so you thought his presence would help</p> <p>05:17:33 13 discredit the commission?</p> <p>05:17:33 14 A. No. I thought that his presence would help</p> <p>05:17:36 15 spotlight some of the sloppy methodology that others on</p> <p>05:17:39 16 the commission had already proven capable of.</p> <p>05:17:53 17 Q. If you turn, please, to the August 28, 2017,</p> <p>05:17:58 18 e-mail.</p> <p>05:18:04 19 MR. BRIDGES: August 20 or 28?</p> <p>05:18:07 20 MR. LOCKERBY: 28th.</p> <p>05:18:08 21 THE WITNESS: Okay.</p> <p>05:18:12 22 BY MR. LOCKERBY:</p> <p>05:18:12 23 Q. This e-mail was posted to the entire voting</p> <p>05:18:17 24 facts Listserv; correct?</p> <p>05:18:20 25 A. Correct.</p>	<p>05:20:04 1 highlighting what you called Adams' reckless sloppiness?</p> <p>05:20:08 2 A. Correct.</p> <p>05:20:43 3 MR. LOCKERBY: If we could take a short break,</p> <p>05:20:44 4 I think I could wrap things up fairly quickly after</p> <p>05:20:47 5 that.</p> <p>05:20:47 6 MR. BRIDGES: Okay.</p> <p>05:20:48 7 THE VIDEOGRAPHER: We're off the record at</p> <p>05:20:49 8 5:20 p.m.</p> <p>05:20:51 9 (A recess is taken.)</p> <p>05:35:53 10 THE VIDEOGRAPHER: We're back on the record at</p> <p>05:35:55 11 5:35 p.m.</p> <p>05:35:56 12 BY MR. LOCKERBY:</p> <p>05:36:05 13 Q. In addition to the Alien Invasion reports that</p> <p>05:36:11 14 are the basis of this lawsuit, there are two other</p> <p>05:36:15 15 reports by PILF, copies of which are in your document</p> <p>05:36:19 16 production. And, in fact, one of them, Garden State</p> <p>05:36:25 17 Gotcha, accounts for more than half of the volume of</p> <p>05:36:28 18 documents that you produced.</p> <p>05:36:31 19 Did you attempt to verify the accuracy of the</p> <p>05:36:34 20 statements in Garden State Gotcha?</p> <p>05:36:37 21 A. I did not.</p> <p>05:36:38 22 Q. I'm going to show you and counsel one of the</p> <p>05:36:49 23 documents that was produced in connection with Garden</p> <p>05:36:53 24 State Gotcha and ask whether you recognize it; and if</p> <p>05:36:56 25 you do, then I'll have it marked as an exhibit.</p>
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<p>05:18:21 1 Q. And you've written, "Purely FYI, I also spoke</p> <p>05:18:35 2 to Jane for the NBC story, not least because I've spoken</p> <p>05:18:39 3 to some of the people that Adams falsely labeled</p> <p>05:18:43 4 criminals. I've not yet been able to convince those</p> <p>05:18:45 5 people I've spoken to to come forward; but there is an</p> <p>05:18:49 6 effort underway, including some of the people involved</p> <p>05:18:52 7 in this lawsuit, to do so in a way that highlights</p> <p>05:18:57 8 Adams' reckless sloppiness. It's still in the early</p> <p>05:19:01 9 stages, but I'm happy to keep you apprised as that</p> <p>05:19:04 10 develops in any way that I can share publicly."</p> <p>05:19:09 11 How many people, roughly, got this posting? Do</p> <p>05:19:13 12 you know?</p> <p>05:19:13 13 A. I don't know.</p> <p>05:19:19 14 Q. And when you refer to "some of the people</p> <p>05:19:20 15 involved in this lawsuit" in this posting, what was this</p> <p>05:19:29 16 lawsuit to which you're referring?</p> <p>05:19:31 17 A. I don't recall. I don't recall. I need to see</p> <p>05:19:36 18 the hyperlink to know.</p> <p>05:19:38 19 Q. And when you said, "there is an effort underway</p> <p>05:19:41 20 to do so in a way that highlights Adams' reckless</p> <p>05:19:46 21 sloppiness," what was the effort underway to which you</p> <p>05:19:49 22 were referring?</p> <p>05:19:50 23 A. I don't know that I can answer that question</p> <p>05:19:52 24 without violating privilege that I do not hold.</p> <p>05:20:03 25 Q. But that effort was for the purpose of</p>	<p>05:37:25 1 It says it's a sample response to a letter from</p> <p>05:37:28 2 Public Interest Legal Foundation.</p> <p>05:37:31 3 A. Yes.</p> <p>05:37:31 4 Q. Do you recognize this?</p> <p>05:37:33 5 A. I do not.</p> <p>05:37:33 6 Q. So you didn't draft this sample response?</p> <p>05:37:36 7 A. No.</p> <p>05:37:38 8 MR. LOCKERBY: I'm not going to mark it as an</p> <p>05:37:40 9 exhibit.</p> <p>05:37:40 10 BY MR. LOCKERBY:</p> <p>05:37:41 11 Q. Now, if we could turn back once again, please,</p> <p>05:37:45 12 to Exhibit 28 -- I'm sorry -- 38.</p> <p>05:37:53 13 A. Okay.</p> <p>05:38:11 14 MR. BRIDGES: The one with the puzzle parts on</p> <p>05:38:13 15 the bottom.</p> <p>05:38:29 16 BY MR. LOCKERBY:</p> <p>05:38:29 17 Q. And on the 60th page of this document, there</p> <p>05:38:35 18 are a series of Tweets dated April 12, 2018.</p> <p>05:38:43 19 A. I found a series of Tweets. So that I don't</p> <p>05:38:46 20 have to count pages --</p> <p>05:38:47 21 Q. At the top there is one by you that begins with</p> <p>05:38:52 22 the sentence, "Unwarranted screaming about voter fraud."</p> <p>05:38:55 23 A. Okay.</p> <p>05:38:58 24 Q. And these Tweets were posted by you the day</p> <p>05:39:08 25 that the complaint against PILF and Mr. Adams was filed;</p>

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<p>05:39:08 1 correct?</p> <p>05:39:15 2 A. Correct.</p> <p>05:39:15 3 Q. And in the Tweet -- the first Tweet, when</p> <p>05:39:23 4 you're referring to "voter fraud vigilantes," were you</p> <p>05:39:27 5 referring to PILF and Mr. Adams?</p> <p>05:39:35 6 A. Not solely, but yes.</p> <p>05:39:36 7 Q. And when you said, "The specific people</p> <p>05:39:41 8 targeted pay the price," were you referring to the</p> <p>05:39:46 9 plaintiffs in this case?</p> <p>05:39:46 10 A. Not individually -- the plaintiffs, among</p> <p>05:39:49 11 others, yes.</p> <p>05:39:50 12 Q. And as of April 12, 2018, what price had the</p> <p>05:39:57 13 specific people targeted paid?</p> <p>05:40:00 14 MR. BRIDGES: Object. That assumes facts.</p> <p>05:40:03 15 Lacks foundation.</p> <p>05:40:04 16 If you want to ask him what he meant, you can</p> <p>05:40:07 17 ask him; but I -- that -- subject to that objection, you</p> <p>05:40:11 18 may respond, if you have a response.</p> <p>05:40:14 19 THE WITNESS: I -- I don't know what they would</p> <p>05:40:17 20 say and certainly can't speak for them. I know that</p> <p>05:40:23 21 they're -- the information of people in the report was</p> <p>05:40:28 22 publicly disclosed. It was claimed that they had</p> <p>05:40:33 23 unlawfully registered while noncitizens.</p> <p>05:40:38 24 In several cases -- sloppy cases, the</p> <p>05:40:43 25 individuals involved were citizens. Their personal</p>	<p>05:42:51 1 you're referring e-mails from registrars that say what</p> <p>05:42:55 2 they say?</p> <p>05:42:55 3 A. Yes. That I believe are linked in the Tweet</p> <p>05:43:01 4 itself.</p> <p>05:43:04 5 Q. And then when you tweeted in 5 out of 7, "I</p> <p>05:43:09 6 talked to some of these citizens who were wrongly</p> <p>05:43:14 7 attacked. They were furious, and I don't blame them one</p> <p>05:43:17 8 bit," are those the citizens who are identified in</p> <p>05:43:23 9 what's been marked as Exhibit 32 and 33 to your</p> <p>05:43:27 10 deposition?</p> <p>05:43:35 11 A. Yes. Some of them, yes.</p> <p>05:43:41 12 Q. And then in No. 6 out of 7, you state, "I don't</p> <p>05:43:54 13 know whether wrongly claiming that people have committed</p> <p>05:43:57 14 felonies in publishing their personal info in the scope</p> <p>05:44:01 15 of a sloppy and overheated vigilante campaign against</p> <p>05:44:06 16 voter fraud is better labeled as bullying or doxxing or</p> <p>05:44:12 17 both."</p> <p>05:44:12 18 Now, the reference to doxxing, that was part of</p> <p>05:44:19 19 your theory of how the Ku Klux Klan Act might be used as</p> <p>05:44:23 20 cause of action in this case against Mr. Adams or PILF;</p> <p>05:44:28 21 isn't that right?</p> <p>05:44:28 22 MR. BRIDGES: Objection. Assumes facts not</p> <p>05:44:30 23 established. Lacks foundation. And I don't know to the</p> <p>05:44:35 24 extent it might interfere with others' work product.</p> <p>05:44:40 25 But with those objections and if you can do so</p>
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<p>05:40:50 1 information, including their address, their dates of</p> <p>05:40:55 2 birth. I believe -- I'm not sure -- in some cases</p> <p>05:41:03 3 signatures. I'm sure in some cases full social security</p> <p>05:41:06 4 numbers. In some cases part social security numbers. I</p> <p>05:41:11 5 think I've mentioned home address were all produced in a</p> <p>05:41:17 6 public document alongside the allegation that they had</p> <p>05:41:19 7 committed felonies. And that information was and may</p> <p>05:41:26 8 still be -- I'm not sure whether it's still up online --</p> <p>05:41:30 9 available for anyone to find. At least some of the</p> <p>05:41:34 10 individuals with whom I had spoken were upset and/or</p> <p>05:41:42 11 afraid as a result. So that was at least one price that</p> <p>05:41:52 12 I thought they might have paid, but I don't know what</p> <p>05:41:57 13 they would have said.</p> <p>05:41:59 14 BY MR. LOCKERBY:</p> <p>05:41:59 15 Q. That was your statement of what price you</p> <p>05:42:03 16 thought they had paid?</p> <p>05:42:05 17 A. At least by that point already, yes, I</p> <p>05:42:09 18 understood that the -- that individual -- that it was at</p> <p>05:42:19 19 least possible for individuals to take further action</p> <p>05:42:22 20 based on the incorrect allegations in the report that</p> <p>05:42:26 21 might lead to a further price.</p> <p>05:42:30 22 Q. And when you say in your Tweet, 11:57 a.m.,</p> <p>05:42:37 23 April 12, 2018, "The defendant in today's suit was</p> <p>05:42:42 24 repeatedly warned that his info was bad info. He</p> <p>05:42:48 25 published anyway," are the repeated warnings to which</p>	<p>05:44:43 1 without -- you can respond without disclosing</p> <p>05:44:48 2 information for which you're not the holder of a</p> <p>05:44:51 3 privilege, please reply.</p> <p>05:44:53 4 THE WITNESS: I can tell you what I meant by</p> <p>05:44:55 5 "doxxing" in this Tweet. I cannot reveal discussions in</p> <p>05:44:59 6 or around any filings in this case without violating</p> <p>05:45:03 7 somebody else's privilege that I do not hold.</p> <p>05:45:06 8 BY MR. LOCKERBY:</p> <p>05:45:06 9 Q. Well, in fact, you have already revealed the</p> <p>05:45:08 10 theory of doxxing as used in this case to third parties;</p> <p>05:45:13 11 isn't that true?</p> <p>05:45:13 12 A. I -- A, I don't know to what you're referring</p> <p>05:45:19 13 to; but B, I don't believe that I have discussed any</p> <p>05:45:25 14 relevance to this case.</p> <p>05:45:29 15 Q. Well, let's look -- I'm sorry. I didn't mean</p> <p>05:45:32 16 to cut you off.</p> <p>05:45:34 17 A. So I don't know that I can answer your</p> <p>05:45:36 18 question. I don't -- if you're talking about the theory</p> <p>05:45:39 19 of doxxing, I can tell you what I think about the theory</p> <p>05:45:42 20 of doxxing. If you're asking what I've discussed in</p> <p>05:45:45 21 particular context with attorneys in this case, I can't</p> <p>05:45:48 22 answer that. And if you're discuss -- if you're talking</p> <p>05:45:51 23 about what I've discussed in particular context with</p> <p>05:45:53 24 third parties about this case, I -- I don't know that I</p> <p>05:45:58 25 have. But if I -- if there's a document that you're</p>

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<p>05:46:00 1 referring to, I'm not sure what you're referring to.</p> <p>05:46:03 2 Q. Take a look, please, at -- we'll be coming to</p> <p>05:46:07 3 back to Exhibit 38, but look at Exhibit 34. It's the</p> <p>05:46:15 4 hundred and twenty -- 20th and 121st page; but it's</p> <p>05:46:19 5 easier to find if you look at the August 7, 2018,</p> <p>05:46:24 6 e-mail --</p> <p>05:46:25 7 A. Okay.</p> <p>05:46:26 8 Q. -- to Caroline Fredrickson and to Pamela</p> <p>05:46:30 9 Karlan, "Re the Klan Act."</p> <p>05:46:41 10 A. Yes.</p> <p>05:46:41 11 Q. Who are Caroline Fredrickson and Pamela Karlan?</p> <p>05:46:54 12 A. Caroline Fredrickson I believe is the executive</p> <p>05:46:58 13 director of the American Constitution Society. Pamela</p> <p>05:47:01 14 Karlan is a law professor at Stanford Law School.</p> <p>05:47:05 15 Q. And as far as you know, do either of those</p> <p>05:47:08 16 organizations or individuals claim some kind of work</p> <p>05:47:15 17 product protection over your communications with them?</p> <p>05:47:19 18 A. No.</p> <p>05:47:27 19 Q. And in the first paragraph you're referring to</p> <p>05:47:32 20 the case of Cockrum versus Trump For President.</p> <p>05:47:36 21 Do you see that?</p> <p>05:47:36 22 A. I do.</p> <p>05:47:37 23 Q. And you have a parenthetical, "Counsel on the</p> <p>05:47:44 24 case were from Protect Democracy, Altshuler Berzon,</p> <p>05:47:49 25 Kekere Van Nest, and Richard Primus from Michigan Law."</p>	<p>05:49:30 1 communications that may be the work product of others</p> <p>05:49:33 2 that he doesn't hold the privilege for.</p> <p>05:49:35 3 MR. LEBOWITZ: Then to the extent it's not, it</p> <p>05:49:37 4 calls for speculation.</p> <p>05:49:39 5 THE WITNESS: Well, and I -- and I'm -- I am --</p> <p>05:49:42 6 I'll add one. I'm confused. I'm not sure whether</p> <p>05:49:44 7 you're asking about my interpretation of the public</p> <p>05:49:46 8 documents that have been filed or about my conversations</p> <p>05:49:49 9 with attorneys. And so I -- I guess I don't know what</p> <p>05:49:53 10 you mean by the question.</p> <p>05:49:56 11 BY MR. LOCKERBY:</p> <p>05:49:58 12 Q. So you don't understand the question? Is that</p> <p>05:50:01 13 your testimony?</p> <p>05:50:02 14 A. Yes.</p> <p>05:50:02 15 Q. First of all, at the beginning of the</p> <p>05:50:10 16 paragraph, you write, "I know there was a lot of time</p> <p>05:50:13 17 and attention paid to how to frame the Klan Act</p> <p>05:50:16 18 allegations in this suit and the suit against Adams in</p> <p>05:50:19 19 Virginia."</p> <p>05:50:20 20 How do you know that there was a lot of time</p> <p>05:50:22 21 and attention paid to how to frame the Klan Act</p> <p>05:50:25 22 allegations against Adams in Virginia?</p> <p>05:50:27 23 A. That would require my violating privilege that</p> <p>05:50:33 24 I do not hold.</p> <p>05:50:34 25 Q. Well, you know that. I'm not asking --</p>
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<p>05:47:54 1 Do you see that?</p> <p>05:47:54 2 A. I do.</p> <p>05:47:55 3 Q. And then in the second paragraph, you write,</p> <p>05:48:02 4 "For what it's worth" -- using an acronym -- "I know</p> <p>05:48:05 5 there was a lot of time and attention paid to how to</p> <p>05:48:10 6 frame the Klan Act allegation in this suit and the suit</p> <p>05:48:13 7 against Adams in Virginia. The Klan Act was used in the</p> <p>05:48:19 8 past for violence or threats of violence and the VRA,</p> <p>05:48:25 9 Voting Rights Act, added intimidation and coercion that</p> <p>05:48:31 10 encompasses specific economic threats. Doxxing connects</p> <p>05:48:35 11 the dots from the targeted public release of private,</p> <p>05:48:39 12 personal information to the sort of intimidation</p> <p>05:48:44 13 contemplated by the Klan Act."</p> <p>05:48:46 14 Do you see that?</p> <p>05:48:46 15 A. I do.</p> <p>05:48:47 16 Q. And that statement about doxxing explains the</p> <p>05:48:57 17 theory by which the plaintiffs in the case in which</p> <p>05:49:01 18 you're testifying seek to hold PILF and Mr. Adams liable</p> <p>05:49:06 19 for violation of the Ku Klux Klan act; isn't that right?</p> <p>05:49:09 20 MR. BRIDGES: I'm going to object to that</p> <p>05:49:10 21 question as phrased because I think it gets into -- if</p> <p>05:49:14 22 it gets into protected attorney work product</p> <p>05:49:18 23 conversations. If you want to rephrase it and ask him</p> <p>05:49:21 24 what he means about it here, I won't -- I won't include</p> <p>05:49:24 25 that objection. But I think as phrased, it invades</p>	<p>05:50:38 1 A. You asked how I know that.</p> <p>05:50:39 2 Q. -- the substance.</p> <p>05:50:40 3 But you know that by virtue of your discussions</p> <p>05:50:43 4 with the Southern Coalition for Social Justice and the</p> <p>05:50:48 5 Protect Democracy Project; is that right?</p> <p>05:50:49 6 A. I'm not going to talk about the content of</p> <p>05:50:51 7 conversations I had that might violate the privilege I</p> <p>05:50:54 8 do not hold.</p> <p>05:50:56 9 Q. The theory of liability against PILF and</p> <p>05:51:04 10 Mr. Adams under the Klan Act is -- in this litigation is</p> <p>05:51:10 11 as described in that third sentence. Quote, Doxxing</p> <p>05:51:15 12 connects the dots from the targeted public release of</p> <p>05:51:20 13 private, personal information to the sort of</p> <p>05:51:23 14 intimidation contemplated by the Klan Act; is that</p> <p>05:51:23 15 right?</p> <p>05:51:28 16 A. That is my impression of the claims that have</p> <p>05:51:31 17 been made publicly and my understanding of the -- the</p> <p>05:51:46 18 Klan Act claim that has been made in this case, but I do</p> <p>05:51:51 19 not speak for counsel about what their theory of the</p> <p>05:51:54 20 case is.</p> <p>05:51:59 21 Q. And you knew that as of April 12, 2018, the day</p> <p>05:52:06 22 the complaint was filed, when you said in the Tweet</p> <p>05:52:10 23 that's been marked as part of -- it is part of</p> <p>05:52:14 24 Exhibit 38, that you didn't know whether it was better</p> <p>05:52:17 25 labeled as bullying or doxxing or both?</p>

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<p>05:52:21 1 A. If you're asking about whether I knew that that</p> <p>05:52:24 2 would be the theory of the case, I would have to refresh</p> <p>05:52:27 3 my recollection about what's in the complaint. But that</p> <p>05:52:36 4 statement in the Tweet doesn't refer to a legal theory.</p> <p>05:52:43 5 So the question is a little bit hard to follow; but I</p> <p>05:52:48 6 think the answer is no, that's incorrect. But if</p> <p>05:52:50 7 you're -- but I think you were asking about my knowledge</p> <p>05:52:53 8 on a particular date in question, and so I'd have to</p> <p>05:52:56 9 actually --</p> <p>05:52:56 10 MR. BRIDGES: I think that means --</p> <p>05:52:56 11 THE WITNESS: -- check --</p> <p>05:52:58 12 MR. BRIDGES: -- you're speculating, so...</p> <p>05:52:59 13 MR. LOCKERBY: Well, I think that the witness</p> <p>05:53:01 14 should be allowed to answer without coaching.</p> <p>05:53:05 15 MR. BRIDGES: Well, when he's guessing at your</p> <p>05:53:07 16 question, he's speculating.</p> <p>05:53:08 17 THE WITNESS: Can you read the question back,</p> <p>05:53:10 18 please. I apologize.</p> <p>05:53:12 19 MR. LOCKERBY: It's not appropriate for counsel</p> <p>05:53:14 20 to advise the witness how to answer. Counsel can simply</p> <p>05:53:19 21 object to questions.</p> <p>05:53:25 22 DEPOSITION OFFICER: Should I read it back?</p> <p>05:53:26 23 THE WITNESS: I'd like to make sure I'm</p> <p>05:53:28 24 answering the question that was actually asked.</p> <p>05:53:29 25 (The record is read by the reporter as</p>	<p>05:54:46 1 Q. And one is the case in which you're testifying</p> <p>05:54:48 2 today?</p> <p>05:54:50 3 A. Correct.</p> <p>05:54:52 4 Q. Have you ever advocated publicly for such an</p> <p>05:54:57 5 interpretation of the Ku Klux Klan Act other than in the</p> <p>05:55:02 6 e-mail that we just looked at?</p> <p>05:55:05 7 MR. BRIDGES: I'll object to that</p> <p>05:55:09 8 mischaracterization of the evidence.</p> <p>05:55:11 9 Subject to that, you may answer.</p> <p>05:55:12 10 THE WITNESS: Yeah. I don't know that that</p> <p>05:55:14 11 e-mail is advocating for.</p> <p>05:55:16 12 BY MR. LOCKERBY:</p> <p>05:55:17 13 Q. I'll strike the reference to the e-mail.</p> <p>05:55:19 14 Have you ever advocated publicly for such an</p> <p>05:55:23 15 interpretation of the Ku Klux Klan Act?</p> <p>05:55:25 16 A. I don't believe I have.</p> <p>05:55:26 17 Q. Have you seen others advocate for such an</p> <p>05:55:29 18 interpretation?</p> <p>05:55:30 19 A. This is where I'd have to refer to the legal</p> <p>05:55:33 20 briefs but -- filed in both the Cockrum case and -- and</p> <p>05:55:38 21 this case. Outside of that, I don't know. I don't</p> <p>05:55:49 22 recall.</p> <p>05:55:49 23 Q. Were the plaintiffs in the Cockrum case</p> <p>05:55:52 24 successful?</p> <p>05:55:53 25 A. Not yet, is my understanding. I understand</p>
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<p>05:53:29 1 follows:</p> <p>05:51:59 2 "Q. And you knew that as of April 12, 2018,</p> <p>05:52:05 3 the day the complaint was filed, when you said</p> <p>05:52:10 4 in the Tweet that's been marked as part of --</p> <p>05:52:13 5 it is part of Exhibit 38, that you didn't know</p> <p>05:52:16 6 whether it was better labeled as bullying or</p> <p>05:52:20 7 doxxing or both?")</p> <p>05:53:53 8 THE WITNESS: So to the extent the question</p> <p>05:54:00 9 presumes that the Tweet refers to the legal theory of</p> <p>05:54:03 10 the case, that is incorrect. To the extent the question</p> <p>05:54:07 11 asks about my knowledge of the legal theory of the case,</p> <p>05:54:10 12 I need to review the complaint in order to answer your</p> <p>05:54:13 13 question.</p> <p>05:54:14 14 BY MR. LOCKERBY:</p> <p>05:54:14 15 Q. Are you aware of any case in which doxxing has</p> <p>05:54:20 16 been successfully invoked as a basis for holding a</p> <p>05:54:24 17 defendant liable for violation of what's known as the</p> <p>05:54:28 18 Ku Klux Klan Act?</p> <p>05:54:29 19 A. Not yet.</p> <p>05:54:33 20 Q. And you're aware of only two cases in which</p> <p>05:54:36 21 it's been attempted; isn't that right?</p> <p>05:54:39 22 A. That's correct.</p> <p>05:54:41 23 Q. One is a case against the Trump For President</p> <p>05:54:45 24 Campaign?</p> <p>05:54:46 25 A. Correct.</p>	<p>05:55:57 1 that the case is still continuing. I don't know if</p> <p>05:56:02 2 that's accurate or not.</p> <p>05:56:03 3 Q. What did you do to prepare to testify today?</p> <p>05:56:10 4 A. I collected the documents requested by the</p> <p>05:56:17 5 subpoena. I had conversation with my counsel. That's</p> <p>05:56:31 6 essentially it.</p> <p>05:56:33 7 Q. Have you had communications with plaintiff's</p> <p>05:56:36 8 counsel about your deposition today?</p> <p>05:56:39 9 A. Only the fact that I was having one.</p> <p>05:56:43 10 Q. Have you had communications with counsel for</p> <p>05:56:47 11 plaintiff's counsel -- at least counsel for some of</p> <p>05:56:51 12 plaintiff's counsel about your deposition testimony</p> <p>05:56:53 13 today?</p> <p>05:56:55 14 A. I'm not even sure we even had conversations</p> <p>05:56:58 15 about the fact that I was having one. Only about the</p> <p>05:57:01 16 fact of when -- if I even did that. And I'm not -- I</p> <p>05:57:04 17 can't honestly say if I did.</p> <p>05:57:05 18 Q. Have you spoken with anyone other than counsel</p> <p>05:57:07 19 about your deposition today?</p> <p>05:57:09 20 A. Yes.</p> <p>05:57:10 21 Q. With whom have you spoken about it?</p> <p>05:57:13 22 A. A few of the individuals named in documents</p> <p>05:57:18 23 provided via subpoena.</p> <p>05:57:20 24 Q. And what individuals are those?</p> <p>05:57:24 25 A. I don't recall all of them. I don't recall all</p>

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<p>05:57:38 1 of them. I can name those that I remember, if that's</p> <p>05:57:43 2 useful.</p> <p>05:57:44 3 Q. That would be.</p> <p>05:57:48 4 A. Rick Hasen, Pildes, Hako Lines [phonetic], Jane</p> <p>05:58:02 5 Timm, Pema Levy.</p> <p>05:58:08 6 Q. I'm sorry. What was the last one?</p> <p>05:58:10 7 A. Pema Levy.</p> <p>05:58:18 8 Caroline Fredrickson, Cameron Bell. One of the</p> <p>05:58:45 9 individuals at Slate. I honestly can't remember which.</p> <p>05:59:11 10 Vanita Gupta, other individuals at Loyola Law School,</p> <p>05:59:39 11 one of the individuals at SKDK, David Becker, David</p> <p>05:59:57 12 Graham, Ed Pilkington.</p> <p>06:00:05 13 I think that's it. There may be others.</p> <p>06:00:11 14 Q. Have you posted any --</p> <p>06:00:12 15 A. Pam Fessler.</p> <p>06:00:16 16 Q. I'm sorry. I didn't mean to cut you off.</p> <p>06:00:19 17 A. Pam Fessler. There may be others.</p> <p>06:00:21 18 Q. Have you posted anything on Twitter about your</p> <p>06:00:27 19 deposition?</p> <p>06:00:27 20 A. I have not.</p> <p>06:00:28 21 Q. Have you sent any e-mails to the Listserv about</p> <p>06:00:32 22 your deposition?</p> <p>06:00:32 23 A. I have not.</p> <p>06:00:33 24 Q. What did you discuss with Mr. Hasen about your</p> <p>06:00:36 25 deposition?</p>	<p>06:02:18 1 doxxing. The release of some of the information in --</p> <p>06:02:31 2 in some of the exhibits, including the individual</p> <p>06:02:34 3 personally identifiable information, along with the</p> <p>06:02:38 4 assertion that individuals had committed crimes, could</p> <p>06:02:45 5 in some circumstances be considered doxxing. But I'm</p> <p>06:02:49 6 not sure.</p> <p>06:02:50 7 MR. LOCKERBY: I have no further questions at</p> <p>06:02:52 8 this time. Depending upon how various -- when and how</p> <p>06:02:57 9 various claims of attorney-client privilege and work</p> <p>06:03:01 10 product immunity are resolved -- not agreeing that this</p> <p>06:03:06 11 is over. I realize that your counsel, plaintiff's</p> <p>06:03:09 12 counsel, counsel for some of plaintiff's counsel would</p> <p>06:03:13 13 have a different view; but we don't need to argue about</p> <p>06:03:15 14 that at this point.</p> <p>06:03:17 15 THE WITNESS: Thank you.</p> <p>06:03:17 16 MR. LOCKERBY: You have the right to review the</p> <p>06:03:20 17 transcript of your deposition and correct any errors</p> <p>06:03:22 18 before it becomes part of the record.</p> <p>06:03:24 19 Would you like to do so?</p> <p>06:03:25 20 THE WITNESS: I would.</p> <p>06:03:28 21 MR. LOCKERBY: Thank you.</p> <p>06:03:30 22 THE WITNESS: Thank you.</p> <p>06:03:30 23 DEPOSITION OFFICER: Would you like to order a</p> <p>06:03:32 24 copy?</p> <p>06:03:32 25 MR. LEBOWITZ: Yes, please.</p>
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<p>06:00:37 1 A. I can make this easier for you. I discussed</p> <p>06:00:39 2 the same thing with each of them. That I would be</p> <p>06:00:42 3 having a deposition, that pursuant to that I might have</p> <p>06:00:48 4 to disclose documents in which they were named.</p> <p>06:00:53 5 Q. Why did you notify all the individuals or</p> <p>06:00:58 6 entities that you've named about that fact?</p> <p>06:01:02 7 A. One of the individuals involved in this case</p> <p>06:01:09 8 has in the past publicly produced documents in a matter</p> <p>06:01:17 9 leading to embarrassment, and I wanted to notify these</p> <p>06:01:21 10 individuals that the documents were being turned over.</p> <p>06:01:26 11 Q. Was there anything in these documents that you</p> <p>06:01:28 12 thought would lead to embarrassment?</p> <p>06:01:32 13 A. I don't know.</p> <p>06:01:34 14 Q. What had been publicly produced before that had</p> <p>06:01:37 15 led to embarrassment?</p> <p>06:01:39 16 A. Some -- some of the registration forms that</p> <p>06:01:49 17 have been produced led to the embarrassment of the</p> <p>06:01:52 18 individuals named in those registration forms. In some</p> <p>06:01:55 19 other cases I know that résumés and the like had been</p> <p>06:02:01 20 collected in public records requests or litigation, and</p> <p>06:02:05 21 the contents had been disclosed in a way that produced</p> <p>06:02:09 22 embarrassment.</p> <p>06:02:10 23 Q. Did you consider that embarrassment to be</p> <p>06:02:12 24 doxxing?</p> <p>06:02:13 25 A. No. I did not consider embarrassment to be</p>	<p>06:03:34 1 THE VIDEOGRAPHER: This is the end of the</p> <p>06:03:36 2 deposition of Justin Levitt, Volume I. The date is</p> <p>06:03:39 3 April 17, 2019. The time is 6:03 p.m.</p> <p>06:03:45 4 And we're off the record.</p> <p>06:03:46 5 (Deposition session concluded at 6:03 p.m.)</p> <p>6 -oOo-</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: center;">Page 225</p> <p>1 I have read the foregoing and by signing hereafter, 2 approve same. 3 4 Dated _____. 5 6 _____ 7 (Signature of Deponent) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">Page 227</p> <p>1 of the testimony given by the witness. (Fed. R. Civ. P. 2 30(f)(1)). 3 Before Completion of the deposition, review of 4 the transcript { X } was { } was not requested. If 5 requested, any changes made by the deponent (and 6 provided to the reporter) during the period allowed, are 7 appended hereto. (Fed. R. Civ. P. 30(e)). 8 9 Dated: April 19, 2019 10 11 12 _____ 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: center;">Page 226</p> <p>1 DEPOSITION OFFICER'S CERTIFICATE 2 3 STATE OF CALIFORNIA } 4 } ss. 5 6 COUNTY OF LOS ANGELES } 7 8 I, THERESA JOANN PHILLIPS-BLACKWELL, hereby 9 certify: 10 I am a duly qualified Certified Shorthand 11 Reporter in the State of California, holder of 12 Certificate Number CSR 12700 issued by the Court 13 Reporters Board of California and which is in full force 14 and effect. (Fed. R. Civ. P. 28(a)). 15 I am authorized to administer oaths or 16 affirmations pursuant to California Code of Civil 17 Procedure, Section 2093(b) and prior to being examined, 18 the witness was first duly sworn by me. (Fed. R. Civ. 19 P. 28(a), 30(f)(1)). 20 I am not a relative or employee or attorney or 21 counsel of any of the parties, nor am I a relative or of 22 such attorney or counsel, nor am I financially 23 interested in this action. (Fed. R. Civ. P. 28). 24 I am the deposition officer that 25 stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record ///</p>	

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